

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 200, 215, 235, 236, 247, 812, 850, 880, 881, 882, 883, 884, 886, 887, 900, 904, 905, 912 and 960

[Docket No. R-95-1409; FR-2383-F-05]

RIN 2501-AA63

Restrictions on Assistance to Noncitizens

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements Section 214 of the Housing and Community Development Act of 1980, as amended. Section 214 prohibits the Secretary of HUD from making financial assistance available to persons other than United States citizens, nationals, or certain categories of eligible noncitizens in HUD's Public Housing and Indian Housing programs (including homeownership), the Section 8 housing assistance payments programs, the Housing Development Grants program, the Section 236 interest reduction and rental assistance programs, the Rent Supplement program, and the Section 235 homeownership program. This final rule follows a proposed rule published on August 25, 1994, and takes into consideration the public comment received on the August 25, 1994 proposed rule.

EFFECTIVE DATE: June 19, 1995.

FOR FURTHER INFORMATION CONTACT: For the covered programs, the following persons should be contacted:

(1) For Public Housing, Section 8 Certificate, Rental Voucher, and Moderate Rehabilitation (except Single Room Occupancy—"SRO") programs—Edward Whipple, Rental and Occupancy Branch, Office of Public Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-5000, telephone (202) 708-0744;

(2) For Indian Housing programs—Dominic Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-5000, telephone (202) 708-1015;

(3) For the Section 8 Moderate Rehabilitation SRO program—Maggie H. Taylor, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-7000, telephone (202) 708-4300;

(4) For the other Section 8 programs, the Section 236 programs, Housing

Development Grants and Rent Supplement—Barbara Hunter, Program Planning Division, Office of Multifamily Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone (202) 708-3944; and (5) For the Section 235

homeownership program—William Heyman, Office of Lender Activities and Land Sales Registration, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone (202) 708-1824.

For persons with hearing impairment, the TDD number is (202) 472-6725. None of the foregoing telephone numbers are toll-free.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, and when approved and assigned OMB control number(s), the control numbers will be published by separate notice in the **Federal Register**.

II. Procedural Matters

A. Implementation of Section 214

HUD reiterates the statement made in the August 25, 1994 proposed rule that the restrictions on the use of assisted housing by noncitizens with ineligible immigration status (see 59 FR 43900-43901) takes effect when this final rule takes effect, which is 90 days from the date of publication in the **Federal Register**. Accordingly, until that time, covered entities (i.e., housing authorities, managers of HUD-assisted housing, and mortgagees in the Section 235 FHA insurance program) are not authorized to take any action based on the eligible immigration status of applicants and tenants.

B. Using the "Effective Date of the Final Rule" as the Pivotal Date, Rather Than "Date of Enactment"

HUD also reiterates its statement in the August 25, 1994 proposed rule concerning the use of the effective date of the final rule as the pivotal date rather than the date of enactment of the statute (see 59 FR 43901). Paragraph (c)(1) of Section 214 was added by the Housing and Community Development Act of 1987 (the 1987 Act) and confers discretion on the Secretary of HUD to continue assistance or defer termination of assistance on behalf of an individual for whom assistance would otherwise be terminated if that person was "receiving

such assistance on the date of enactment of the Housing and Community Development Act of 1987."

The term "date of enactment" is also found in Section 214(d) in the description of the elderly persons who need not provide documentation of their immigration status. The statute exempts from such documentation any individual who is "62 years of age or older, and is receiving financial assistance on the date of the enactment of the Housing and Community Development Act of 1987."

HUD has determined that the provisions of Section 214 are to complex to be determined self-implementing as of the date of enactment of the 1987 Act (February 5, 1988). Thus, the restrictions of Section 214 will not be felt until this final rule is published and effective.

C. Nondiscrimination in Implementation of Section 214

Several commenters stated that implementation of Section 214 could promote discrimination against certain minority and ethnic groups. Section 214 is constructed in a way that allows little discretionary action in its implementation. This was discussed to some extent in the preamble to the proposed rule (59 FR 43900). As noted in the preamble to the August 25, 1994 proposed rule, Section 214 is specific concerning those noncitizens who are eligible for HUD housing assistance. Section 214 also specifies the type of documentation that must be submitted, the type of verification to be undertaken, and the type of due process procedures available to individuals and families. Therefore, a housing authority or project owner does not have the discretion to accept or deny admission to certain categories of noncitizens, but not others, because the statute specifies the eligible categories. Further, the housing authority or project owner does not have the discretion to request certain immigration documentation from certain noncitizens, but not others, because the statute specifies the acceptable documentation as does this rule. The housing authority or project owner does not have the discretion to request documentation of citizenship status because the statute, as does this rule, provides that citizens only need execute a declaration of citizenship status, signed under penalty of perjury. HUD is aware of the sensitive nature of verifying eligible immigration status for HUD public housing and assisted housing, and has included a separate section in the implementing regulations setting forth applicable nondiscrimination requirements. In

setting forth the applicable nondiscrimination requirements, however, the final rule does not (nor did the proposed rule) summarize the content of each nondiscrimination statute or regulation (e.g., such as title VI of the Civil Rights Act of 1964 or the Fair Housing Act). These nondiscrimination statutes and regulations which are longstanding and applicable to almost all HUD programs are familiar to housing authorities and project owners.

III. Statutory and Regulatory Background

The restrictions on providing housing assistance to noncitizens with ineligible immigration status have been embodied in statute since 1980. Section 214 of the Housing and Community Development Act of 1980 (94 Stat. 1637) (Section 214) was the original basis for restrictions on providing assistance to noncitizens with ineligible immigration status in the assisted housing programs. Section 214 was amended by section 329(a) of the Housing and Community Development Amendments of 1981 (94 Stat. 408), by section 121(a)(2) of the Immigration Reform and Control Act of 1986 ("IRCA", 100 Stat. 3384), and by section 164 of the Housing and Community Development Act of 1987 (101 Stat. 1860). (Section 214, as amended by these statutory sections, is codified at 42 U.S.C. 1436a.)

There have been several previous attempts by HUD to implement Section 214 by regulation. Rules, both proposed and final, were published in 1982 (47 FR 18914, and 47 FR 43674), 1986 (51 FR 15611), and 1988 (53 FR 842, and 53 FR 41038). Despite the publication of final rules during the period between 1982 and 1988, the statutory restrictions of Section 214 have not been made effective.¹

This final rule, which takes effect on June 19, 1995, follows publication of a proposed rule published on August 25, 1994 (59 FR 43900) and takes into consideration public comment received on this proposed rule. The discussion of public comments on the August 25, 1994 proposed rule is set forth in Section V of this preamble.

IV. Differences Between the Proposed Rule and the Final Rule

As will be discussed in more detail in Section V of this preamble, very few changes were made to the Section 214 proposed regulations at the final rule stage because of the prescriptive nature

of Section 214. Section 214 specifies the HUD programs that are covered by the statute, the categories of noncitizens that are eligible to receive HUD financial assistance, the procedures to be used to verify immigration status, the type of documentation that must be submitted, and who must submit this documentation, the appeal procedures to be provided to persons initially determined to have ineligible status, and the special assistance to be provided to certain families with members who have eligible status and those who have ineligible status. Accordingly, with the exception of clarifying changes, and editorial corrections, the principal changes made at the final rule stage are as follows:

1. *Removing housing authorities (HAs) and project owners as the "conduits" in the INS appeals process.* In response to public comment (from both representatives of housing authorities and project owners and representatives of resident groups), the final rule has been revised to allow applicants and tenants to directly appeal to INS, and INS to directly reply to applicants and tenants (i.e., without having to go through housing authorities and project owners as intermediaries in the INS appeal process).

2. *Clarifying that proration of assistance is not discretionary on the part of project owners and housing authorities.* The proposed rule was not clear on whether proration of assistance must be provided to eligible mixed families, or whether the project owner or housing authority had the discretion to offer proration of assistance. While the majority of commenters appeared to understand that proration of assistance must be offered to eligible mixed families, the final rule clarifies that this is the case.

3. *Strengthening the confidentiality and privacy of information concerning immigration status.* The final rule clarifies that HAs, landlords and HUD officials cannot use the information in their possession for any purpose other than determining an individual's eligibility for housing assistance.

V. Discussion of Public Comments

This section presents the significant issues raised by the public commenters on the August 25, 1994 proposed rule. Several commenters offered editorial suggestions to certain of the regulatory suggestions, or revised regulatory text. Each of these suggestions is not discussed in this section. To the extent that the suggestion or revision helped clarify the meaning of the regulatory text, the suggestion was adopted. In several cases the editorial comment did

not convey the appropriate meaning of the regulatory text.

Application of Rule

Comment. Several commenters requested that the final rule grandfather in all current residents and apply the rule only to applicants.

HUD Response. The language of Section 214, which provides for preservation of assistance for those mixed families (those families who contain eligible and ineligible members) currently residing in HUD public housing and assisted housing, indicates that the Congress contemplated that the restrictions on housing assistance imposed by Section 214 would apply not only to applicants, but to tenants as well. (See Section 214(c)).

Comment. Another commenter requested that the rule not require the head of household or adult members to have legal immigration status, and thus permit children who have such status to enter into lease agreements and contracts on behalf of the adult members.

HUD Response. Section 214 restricts HUD from adopting the suggestion of the commenter. Section 214(d) provides for adult member to execute documents on behalf of children. Section 214(c) which addresses continued assistance is the statutory provision which requires the head of household or spouse to be a U.S. citizen or national, or to have the eligible immigration status listed in Section 214. In the case of a mixed family with eligible children and two ineligible adults (the adults are neither U.S. citizens or meet one of the six specified categories of eligible immigration status) may be eligible for prorated assistance, as provided in the August 25, 1994 proposed rule, and this final rule.

Comment. Another commenter requested that the rule clarify the application of Section 214 *vis a vis* local/Federal preferences.

HUD Response. Preferences and eligibility for public housing and HUD-assisted housing are two different matters. Families must first meet the eligibility requirements for public housing and HUD-assisted housing, and then local/Federal preferences are applied to eligible families.

Delay Effective Date of Final Rule

Comment. Several commenters requested that HUD delay the effective date of the final rule for six months because of the preparation and staff training that will be needed by housing authorities in connection with implementation of Section 214.

¹ A detailed history of the regulatory efforts to implement Section 214 (including why the final rules were not made effective) can be found in the rule published on January 13, 1988 (53 FR 842).

HUD Response. HUD believes that the delay of 90 days is sufficient time for housing authorities and HUD to prepare for implementation of Section 214.

Guidance to Supplement Final Rule

Comment. Another commenter urged HUD to publish comprehensive guidance in connection with the publication of the final rule.

HUD Response. HUD has every intention of issuing guidance to assist HAs and project owners with implementation of Section 214.

Liability of Ineligible Tenants for Reimbursement of Benefits

Commenter. One commenter stated that an owner cannot be held responsible for pursuit of recapture of payment of subsidies to ineligible tenants.

HUD Response. The rule does not hold owners responsible for pursuit of repayments of subsidies to ineligible tenants, but rather when it is determined that HUD assistance was paid to an ineligible tenant, "the project owner *is encouraged* to refer to the case to the HUD Inspector General's office for further investigation." (Emphasis added; see, e.g., 24 CFR 200.192).

Recordkeeping

Comment. One commenter, referring to § 200.186(h) (Retention of documents), stated that the rule was not clear on which documents must be retained for a period of five years—documents for all families or just those families requesting an INS appeal.

HUD Response. Section 200.186(h) and the parallel provisions in §§ 812.9(h), 905.310(q), and 912.9(h) provide that the project owner or housing authority "shall retain for a minimum of five years the following documents that may have been submitted to the project owner by the family or provided to the project owner *as part of the INS appeal or the informal hearing process.*" (Emphasis added.)

Terminology

Comment. Five commenters stated that in lieu of the terms "citizen" and "noncitizens," HUD should refer to the persons eligible to apply for HUD housing as "authorized persons."

HUD Response. In using the term "noncitizen," HUD's intention is to convey the design of Section 214. Section 214 imposes no restrictions on HUD housing assistance for citizens, including U.S. nationals, but rather, imposes restrictions on the provision of housing assistance to those who are not citizens, by limiting housing assistance to certain categories of legally admitted

noncitizens. All categories of noncitizens who are authorized to reside in the United States are not necessarily authorized to receive HUD housing assistance (for example, student noncitizens).

Eligibility for HUD Financial Assistance

Comment. One commenter stated that the rule does not address the status of "Section 203" preference class applicants, which, according to the commenter, are categorized by the Department of State as "spouses and children of legalization beneficiaries."

HUD Response. Section 214 lists those categories of noncitizens that are eligible for HUD housing assistance, and these categories are repeated in the rule with elaboration, based on information provided by INS. (See Section 214(a). Section 200.182 and comparable sections (§§ 812.5, 905.310(a) and 912.5) provide that an eligible noncitizen includes one who is lawfully present in the United States "as a result of being granted conditional entry under section 203(a)(7) of the INA."

Comment. Another commenter stated that the rule does not take into account the transborder treaty agreements concerning Native Americans. The commenter noted that under these treaty agreements, many Native Americans have the right to cross freely into the United States and have the legal right to reside and work in the United States.

HUD Response. Neither Section 214 nor these regulations interfere with transborder treaty agreements concerning Native Americans.

Evidence of Eligible Status

Comment. Eight commenters stated that HUD exceeds its authority in implementing regulations that require documentation and verification from applicants. These commenters stated that the statute only imposes documentation requirements on noncitizens who were residing in assisted housing when the statute was enacted to document their ineligible status.

HUD Response. HUD disagrees with the interpretation proposed by the commenters. The statute refers to documentation requirements "at the time of application" (see Section 214(d)(4)), and speaks in terms of "denying" assistance, not just "terminating" assistance (see Section 214(d)(4)), which therefore indicate that the statute intended to encompass applicants, and not just those families residing in HUD public housing and assisted housing at the time of enactment of the statute.

Comment. Eight commenters requested that the final rule require U.S. citizens to provide documentation of eligibility, and that citizenship status should be verified. Other commenters stated that a declaration signed under penalty of perjury, as required by the August 25, 1994 proposed rule of U.S. citizens, is inadequate and is not a realistic deterrent against fraud. Another commenter stated that the declaration, to be signed by U.S. citizens, should require the individual signing the declaration to identify his or her place of birth, city, county and State. Another commenter requested that the final rule require U.S. citizens to submit the same type of documentation that is currently required of U.S. citizens under employer verification requirements. Another commenter requested that persons 62 years of age or older should be subject to same documentation requirements as everyone else.

HUD Response. The Immigration Reform and Control Act of 1986 (IRCA) (Pub. L. 99-603, approved November 6, 1986) amended Section 214 by providing a procedure for the submission and verification of evidence of citizenship or eligible immigration status. The amendment specifically provides that U.S. citizens and nationals only need submit a declaration in writing, signed under penalty of perjury (Section 214(d)). For individuals 62 years of age or older Section 214 requires documentation if "such an individual is not a citizen or national of the United States, is not 62 years of age or older" (Section 214(d)(2)). Accordingly, HUD interprets this language to provide that individuals 62 years of age or older and receiving assistance on the effective date of the final rule, like citizens or nationals, need only submit a declaration in writing, and proof of age.

Comment. Two commenters stated HUD should disseminate standard and model documents, such as a standard declaration form, and acceptable INS forms.

HUD Response. In its guidance to be issued in connection with implementation of the final rule, HUD intends to provide as much information as possible to housing authorities and project owners, including, where appropriate, model documents, and samples of standard INS forms.

Documents in Languages Other Than English

Comment. Fifteen commenters stated that there is a substantial cost involved with the requirement imposed on housing authorities and project owners to provide documents in languages

other than English to the extent "feasible." Twelve commenters stated that there will be disputes over "what is feasible." Six commenters stated that HUD should provide model notices in languages other than English. Another commenter stated the issue providing notification in languages other than English is not simply making documents available in other languages, but in having interpreters to interview applicants, and ask follow-up questions. Seven commenters stated that the translation of documents into other languages should be a firm requirement and not left to the owner's discretion.

HUD Response. The "feasibility" language in the rule is to assist housing authorities to maintain the flexibility that they currently have with respect to translating documents into languages other than English, and to exercise judgment with respect to translating documents into languages of a population group which they serve, of a substantial number, and which speaks a language other than English. Many housing authorities and project owners currently, without any requirement imposed, translate documents into languages other than English. Additionally, housing authorities and project owners may have staff in their employ which speak languages other than English, and can assist residents in understanding documents. Apart from the notices, certifications, and documentation required by this rule, applying for HUD public housing or HUD assisted housing involves reviewing and completing documents which make reference to certain rights and responsibilities; for example, the application form, the lease (which will specify the rights of the tenant, as well as sanctions that may be imposed against the tenant for violation of the lease) and other documents which support the individual or family's eligibility for assisted housing (i.e., documentation of income). It is HUD's understanding that housing authorities and project owners currently make efforts to assist residents with completion of these documents, if not by providing translated documents, by allowing individuals the opportunity and time to find a family member or friend who can assist them with understanding and completing these documents, or in some cases (as mentioned above), the housing authority may have in its employ an individual who can provide such assistance.

As noted in discussion of other aspects of applying for and residing in HUD public housing or assisted housing, HUD would like housing authorities and project owners to utilize

procedures already in place with respect to implementation of this rule, to the extent possible. For example, the rule provides for housing authorities and project owners to verify immigration status at the same time other aspects of eligibility are verified. Similarly, HUD would like housing authorities and project owners to handle the documents required by this rule, which are important, in the same manner that they handle other important documents (again, the application, the lease, eviction notices, etc.) that specify the rights and responsibilities of the applicant or tenant. The "feasibility" language is to encourage housing authorities and project owners to continue procedures already in place to assist families whose first language is not English. Accordingly, HUD declines to make the translation of documents into a requirement, as suggested by some commenters.

When To Submit Evidence of Eligible Immigration Status

Comment. One commenter stated that submission of evidence of citizenship or eligible immigration status should occur at each annual recertification, and not simply one time during continuously assisted occupancy, as the proposed rule provided. The commenter stated that INS forms are by their very nature "temporary" in every case, and noted that the proposed rule calls for only an initial proffer of documents versus a yearly demonstration of eligibility.

HUD Response. The statute does not speak in terms of annual verification, but only in terms of an initial documentation and verification of tenants and applicants. Accordingly, HUD declines to revise the proposed rule to impose an annual demonstration of eligibility.

Comment. Two commenters stated that the final rule must clarify when evidence is to be submitted by applicants. The commenters noted that the August 25, 1994 proposed rule stated that evidence of eligible status is submitted not later than the date the project owner anticipates or has knowledge that verification or other aspects of eligibility for assistance will occur.

HUD Response. The responsibility of housing authorities and project owners is simply to ensure that this evidence is submitted by or within a reasonable time within which verification of eligibility will take place.

Extension of Time To Submit Evidence

Comment. Five commenters stated that the mandatory extensions of time imposed by the rule will create an

administrative burden for authorities, owners, and managers.

HUD Response. The mandatory extensions of time are imposed by statute. Section 214(d)(A) *requires* the Secretary of HUD to provide a reasonable opportunity to submit evidence of eligible status if such evidence is not submitted at the time of application or recertification for financial assistance. Section 214(d) provides that "for purposes of this subsection, the term 'Secretary' means the Secretary of Housing and Urban Development, a public housing agency, or another entity that determines the eligibility of an individual for financial assistance."

Comment. Two commenters stated that the final rule should define what is meant by a "reasonable period of time." The commenters stated that "while we accept that the statute requires extensions of a 'reasonable period of time,' we are very concerned that without further definition in the rule, there will be countless disputes over whether the extension was sufficient." Two commenters stated that the rule should require more than a self-certification that documentation is temporarily unavailable. Three commenters stated that extensions of time to submit evidence must be the exception, and not the norm.

HUD Response. HUD believes that extensions of time will be the exception and not the norm, and that for those extensions requested, the extensions, generally, will not exceed 30 days in duration. However, HUD declines to establish by regulation what constitutes a reasonable period of time, and prefers to allow housing authorities and project owners the flexibility to determine what is reasonable given the circumstances of the particular case for extension before them.

Limiting Acceptable Immigration Evidence to INS Documents

Comment. Four commenters stated that HUD's list of acceptable documents is unnecessarily narrow and will cause hardship and inconvenience to eligible persons. The commenters stated that the seven categories listed in the statute can be documented through many more INS-issued and non-INS-issued documents than are listed in the rule. Four commenters stated that requiring two documents from those individuals with certain I-94s is both unfair and unjustified. Four commenters also stated that requiring that eligibility for the replacement of the document be verified before the receipt can even be submitted defeats the whole purpose of the rule's protections against delay or

denial pending INS verification. Other commenters provided suggestions of other types of evidence that HUD and INS should determine as acceptable evidence of immigration status.

HUD Response. With respect to acceptable evidence of immigration status, HUD follows the guidance and requirements issued by INS. However, the final rule provides, as did the proposed rule, that other acceptable documents as announced by INS will be announced by notice published in the **Federal Register**.

Comment. One commenter stated that the list of documents of eligible immigration status did not reflect a proper understanding of INS procedures and of the Immigration Court's authority.

HUD Response. This list was prepared in consultation with the INS. Again, as noted in the response to the preceding comment, any additional acceptable evidence or any changes to the evidence listed in this rule will be announced by notice in the **Federal Register**, and HUD will make any conforming amendments, as may be necessary, at the earliest possible opportunity.

Verification of Eligible Immigration Status

Comment. Several commenters objected to HUD's proposed use of the SAVE system. The commenters stated that the SAVE system is ineffective, inaccurate, and costly. The commenters suggested that HUD should not use SAVE until it has been further tested. Other commenters encouraged the Secretary of HUD to waive the verification requirements of IRCA. Other commenters encouraged HUD to use, in lieu of SAVE, a verification system modeled on the current employer verification system.

HUD Response. HUD declines to adopt the suggestions of the commenters, and will proceed to use the SAVE system, as provided by Section 214. HUD believes that since its implementation SAVE has significantly improved, and is more effective and accurate than at the time of its start-up.

When Verification Is To Occur

Comment. Two commenters requested that the final rule provide that verification of immigration status occur at the time of application.

HUD Response. HUD declines to adopt the suggestion of the commenters, and the final rule provides, as did the proposed rule, that verification of immigration status should occur at the time that verification of other aspects of eligibility for assistance occur.

No Delay, Denial or Termination of Assistance Pending Verification or Appeals Process

Comment. Several commenters stated that applicants should not be admitted to housing until final eligibility is determined.

HUD Response. The statute is very clear that "pending verification or appeal, the Secretary may not delay, deny, reduce or terminate the individual's eligibility for financial assistance on the basis of the individual's immigration status." (See Section 214(d)(4)).

Comment. Thirteen commenters stated that the final rule should make clear that applicants who reach the top of the waiting list before INS completes its verification must be offered housing even though eligible status has not been established.

HUD Response. HUD believes that the final rule is clear on this issue, and no additional language need be added to the rule.

Appeal to INS of Adverse Determination Concerning Immigration Status

Comment. Twenty commenters, representing individuals, housing authorities and project owners, stated that the housing authority and the project owner should be removed from the INS appeal process; that this should be exclusively between the applicant/tenant and INS.

HUD Response. As noted earlier in this preamble, the final rule provides for direct applicant/tenant participation in the INS appeal process, and removes the housing authority or project owner as the intermediary. The final rule, however, provides for the housing authority and project owner to be copied on correspondence between INS and the applicant/tenant.

Comment. One commenter stated that the proposed rule misinterpreted the nature of immigration hearings and the authority of immigration judges to bind the INS. The commenter stated that any decision by the immigration court is final unless reversed on appeal by the Board of Immigration Appeals. Another commenter stated that the rule needs to clearly establish what an INS appeal is because the INS has no regulations or procedures in place regarding appeal from secondary verification.

HUD Response. In developing the proposed rule, and in developing this final rule, HUD solicited and received the assistance of the INS, and the rule reflects the input of INS. Although the INS regulations found in title 8 of the Code of Federal Regulations do not specifically reference appeal procedures

applicable to the SAVE system, the INS regulations have procedures in place to provide for further determination of the accuracy of their records on noncitizens. (See 8 CFR part 103; see generally §§ 103.20–103.36.

Informal Fair Hearing Process

Comment. Several commenters requested that the final rule eliminate the hearing process to be provided by the housing authority or project owner. The commenters questioned the purpose of the hearing. The commenters stated that the project owner is not qualified to second guess the entire INS process and determine that an otherwise ineligible person or family is ineligible. Other commenters stated that HUD should not adopt a procedure which carves out special rights for a particular category of ineligible applicant.

HUD Response. The informal hearing process is mandated by statute. Section 214 provides that "if the Secretary determines, after complying with the requirements of paragraph (4) (which addresses the INS appeal process), that such an individual is not in a satisfactory immigration status * * * the applicable fair hearing process shall be made available with respect to the individual." (See Section 214(d)(4).)

Comment. Three commenters stated that with respect to the fair hearing provided by the housing authority or the owner, the right to discovery should be limited to those documents in the HA's possession.

HUD Response. In the matter of discovery, the HA or project owner only would be required to produce documents in its possession.

Comment. Three commenters stated that the rule should require the housing authority or project owner to incur the costs of any interpretive services.

HUD Response. HUD declines to adopt the suggestion of the commenter. HUD prefers to maintain the flexibility provided in the proposed rule, which allows for the parties to agree on the arrangement of interpretive services. HUD believes that in many cases, the applicant or tenant will rely upon a family member, relative, or friend to serve as the interpreter.

Preservation of Family (Mixed Family) Provisions

Mixed Families

Comment. A few commenters urged HUD to drop the "preservation of family" provisions in the rule. The commenters stated that ineligible persons should not be allowed to reside in an assisted unit.

HUD Response. The "preservation of family" provisions flow directly from

the statute. Section 214(c) provides for continued assistance and temporary deferral of termination of assistance for mixed families.

Comment. Four commenters asked whether a mixed family may choose temporary deferral of termination of assistance, and then select prorated assistance at the end of the deferral period.

HUD Response. A family that receives temporary deferral of termination of assistance bears a responsibility to make a good faith effort to obtain other affordable housing, and the family's efforts are monitored by the housing authority or project owner. If the family makes such good faith efforts but is unsuccessful in obtaining other affordable housing, the family shall be provided prorated assistance.

Continued Assistance

Comment. Several commenters objected to the restrictive definition of "family" which determines eligibility for continued assistance. The commenters stated that this definition unfairly penalizes a wide range of families, and further stated that the requirement that the head of household or spouse be a U.S. citizen is discriminatory.

HUD Response. The definition of "family" which determines eligibility for continued assistance is taken directly from the statute. Section 214(c)(1)(A), which addresses continued assistance, provides that HUD may permit the continued provision of financial assistance, if necessary to avoid the division of family in which: "the head of household or spouse is a citizen of the United States, a national of the United States, or an alien resident of the United States described in any paragraphs (1) through (6) of subsection (a). For purposes of this paragraph, the term 'family' means a head of household, any spouse, any parents of the head of household, any parents of the spouse, and any children of the head of household or spouse."

Comment. Four commenters stated that the rule should make clear that housing authorities are not permitted to establish conditions for continued assistance that are more burdensome than permitted by statute. The commenters stated that this rule must set out in mandatory language the circumstances under which continued assistance must be granted.

HUD Response. The statute permits housing authorities the discretion to grant continued assistance. This issue was discussed in detail in the preamble to the proposed rule (see 59 FR 43913-43914). The final rule provides (as did

the proposed rule) the conditions under which continued assistance may be granted by housing authorities (see §§ 812.11(c) and 912.11(c)).

Comment. One commenter requested that § 200.187 be revised to make clear that the requirements of this section, which address continued assistance, are not tied to the date on which the regulations become effective but rather continued assistance shall be determined as of the date following completion of the applicable hearing process.

HUD Response. HUD believes that the commenter misunderstands the reference to the "effective date of the rule" in this provision. This section provides that a family that is eligible for continued assistance must have been receiving assistance under a covered HUD program as of the effective date of the rule. In other words, continued assistance is not available to applicant families.

Deferral of Termination of Assistance

Comment. Five commenters requested that HUD remove the provision concerning temporary deferral of termination of assistance on the basis that this provision subjects owners and managers to legal liability. The commenters stated that this provision requires owners and managers to make a number of judgments (e.g., whether there is other affordable housing in the market) that would subject them to legal liability. Another commenter stated that this provision was discriminatory to other categories of residents; that no other category of resident who becomes ineligible for housing is protected from dislocation solely because the resident has not located other affordable housing. Seven commenters stated that the three year deferral period provided in the rule is too long, and that the period should be limited to six months or one year, at a maximum. The commenters stated that the three year period would adversely impact eligible families on the waiting list. Another commenter stated that the notification requirement imposed in connection with deferral of termination of assistance is burdensome.

HUD Response. In allowing for a period of up to three years to defer termination of assistance, HUD is adopting the language of Section 214, which provides for an aggregate period of three years (see Section 214(c)(1)(B)). Additionally, Section 214 requires that: "At the beginning of each deferral period, the public housing agency or other entity involved shall inform the individual and family members of their ineligibility for financial assistance and

offer them other assistance in finding other affordable housing." (See Section 214(c)(1)(B)). HUD believes that these "preservation of family" provisions reflect the concern of the Congress about displacement, or immediate displacement of families, who but for their immigration status, were eligible to reside in public housing or assisted housing, and had not otherwise presented cause for eviction or termination of assistance.

Comment. Fifteen commenters stated that the August 25, 1994 proposed rule imposes three conditions which must be met in order for a family to be eligible for temporary deferral of termination of assistance, and that families only should be required to meet one standard.

HUD Response. For project owners, § 200.187(c) of the final rule requires, as did the proposed rule, that temporary deferral of termination of assistance shall be granted to a mixed family if "one of the following conditions is met." This language is not adopted in §§ 812.10(c)(1), 905.310(r)(3) or 912.10(c)(1). Again, as discussed in detail in the preamble to the proposed rule, the statute gives directly to housing authorities the discretion to determine the appropriateness of providing continued assistance or temporary deferral of termination of assistance. Since this discretion is given directly to housing authorities, HUD cannot preempt this discretion and impose requirements on housing authorities. Accordingly, the "temporary deferral of termination" provisions for housing authorities more closely mirrors the language of the statute.

Comment. Two commenters stated that the final rule should impose specific conditions on housing authorities for the granting temporary deferral of termination of assistance, as it did for project owners.

HUD Response. As discussed in the preamble to the proposed rule (59 FR 43914), Section 214 permits HUD (in the case of project owners) or the HA to defer termination of assistance in certain circumstances. For project owners, the rule requires project owners to grant this type of relief if a family meets certain qualifying conditions for HAs, the rule permits HAs to determine whether this type of relief will be provided, but requires the HA, in establishing its standards, to be guided by the standards set forth in this rule implementing Section 214.

Proration of Assistance

Comment. A number of commenters voiced their objection to proration of assistance on the basis that this process

would be an administrative nightmare. Several of these commenters advocated that in order to eliminate this burden, full assistance should be provided to a family when one or more members of the family have citizenship or eligible immigration status. One commenter stated that proration of assistance was not supported by the language of Section 214. Another commenter stated that despite limiting assistance to only eligible family members, ineligible family members benefit from proration of assistance. Three other commenters suggested that only ineligible extended members of the family (and not core family members who have ineligible extended members of the family (and not core family members who have ineligible status) be counted as ineligible in determining prorated assistance. Other commenters made suggestions concerning alternative proration formulas, and one of these commenters suggested that HUD accept each housing authority's calculation of the rent level that would permit the housing authority to "break even without the benefit of Federal subsidies."

HUD Response. HUD carefully considered all of the suggestions and recommendations made by the commenters on the proration of assistance provisions, and declines to make changes to the August 25, 1994 proposed rule at the final rule stage. Proration of assistance is consistent with the preservation of Families provisions of Section 214, which provide for continued assistance and temporary deferral of termination of assistance. HUD believes that the proration formulas set forth in the rule are workable, and HUD will make every effort to assist housing authorities and project owners in making these formulas more easily workable.

Comment. Another commenter requested clarification whether providing proration of assistance is discretionary on the part of the housing authorities.

HUD Response. The final rule clarifies that for both housing authorities and project owners, proration of assistance must be offered to eligible mixed families.

Comment. Four commenters asked for guidance for action to be taken if the family is unable to pay prorated subsidy.

HUD Response. Housing authorities and project owners should utilize the procedures currently in place when a family is unable to pay its share of rent.

Comment. One commenter stated that the prohibition against extension of assistance to noncitizen students should

not be extended to the citizen children of the noncitizen student and noncitizen spouse.

HUD Response. The final rule provides, as did the proposed rule, that the prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student. Section 214 provides that nonimmigrant student are not eligible for financial assistance under the programs covered by Section 214. If the nonimmigrant student and the noncitizen spouse of the student have children born in the U.S., the citizenship status of the children would not be sufficient in and of itself to make the family eligible for prorated assistance because the fact remains that the family is in the United States for the purpose of the education of the nonimmigrant student, and not for the purpose of immigrating to the U.S. In other words, Section 213 covered financial assistance is not available to noncitizens who have not expressed an intention of immigrating to the United States.

Protection of Individual's Privacy

Comment. Ten commenters stated that the proposed rule failed to provide effective guards against the misuse of immigration status information submitted by applicants and tenants, and that the final rule should clarify that HAs, landlords and HUD officials cannot use the information in their possession for any purpose other than determining an individual's eligibility for housing assistance.

HUD Response. HUD agrees with the commenters and the final rule clarifies that immigration status information provided to HAs, landlords and HUD officials only may be used for purposes of determining an individual's eligibility for housing assistance.

Nondiscrimination Provisions

Comment. One commenter requested that the final rule contain a blanket hold-harmless provision to owners in the implementation of Section 214.

HUD Response. HUD declines to adopt this recommendation.

Comment. Ten commenters stated that HUD must establish explicit policies which prohibit and punish foreseeable discriminatory applications of the noncitizens restrictions. The commenters stated that the proposed rule merely recites general anti-discrimination laws from related statutes. The commenters stated that housing authorities should not be able to require different evidence of citizenship or eligible immigration

status based on foreign accents or non-English sounding surnames.

HUD Response. HUD believes that the anti-discrimination statutes and regulations currently in place are sufficient to address discriminatory actions that may result in connection with implementation of Section 214, and establishment of additional policies and sanctions is not necessary. There is no need for HUD to impose sanctions and penalties in addition to, or similar to those imposed by the Fair Housing Act and Title VI of the Civil Rights Act. As discussed at the beginning of this preamble, Section 214 is constructed in a way that allows little discretionary action in its implementation. For example, Section 214 is very specific with respect to documentation requirements. Accordingly, if an individual signs a declaration under penalty of perjury that he or she is a citizen, that is all the documentation that is required under the statute and these regulations.

Administrative Burden/Unfunded Mandate

Comment. Although commenters acknowledged HUD's statement in the August 25, 1994 proposed rule that the costs of automated verification of immigration status through the SAVE system would be billed directly to HUD, the majority of the commenters stated that implementation of Section 214 imposes a substantial administrative burden, and HUD fails to address reimbursement of all of the costs associated with implementation of this statute, such as the various notification requirements, document collection, hearings, record retention, and the time and expense of training new staff in the new procedure for verifying noncitizen status.

HUD Response. HUD acknowledges that there are additional administrative responsibilities imposed by Section 214, and HUD has made every effort to minimize the administrative burden through this regulation. HUD will continue to make efforts to assist housing authorities and project owners to carry out their responsibilities through the guidance to be issued in connection with this final rule.

VI. Other Matters

Executive Order 12866. This final rule was reviewed by the Office of Management and Budget under Executive Order 12866 as a significant regulatory action. Any changes made in this rule as a result of that review are clearly identified in the docket file for this proposed rule, which is available for public inspection in the Office of

HUD's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC. 20410-0500.

Environmental Review. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of the August 25, 1994 proposed rule. That Finding remains applicable to this final rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Flexibility Act. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication, and by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities. HUD believes that the rule, when implemented, will have only a minimal impact on small housing project owners, small mortgagees and small housing agencies, since the procedures specified to implement the restrictions are to require owners and HAs to use an easily accessible (by telephone) automated system for verifying immigration status. HUD has arranged for the cost of the automated verification system, established by the Immigration and Naturalization Service, to be billed directly to HUD. The only other significant element of cost or delay in administration of HUD programs that may be encountered by small entities as a result of this rule is the requirement for a fair hearing, on request, for any applicant or tenant found to be ineligible. This procedure is specifically required by 42 U.S.C. 1436a. However, HUD does not believe that the cost or delay related to this statutory requirement will be significant because HUD anticipates that small housing agencies, project owners and mortgagees will find that the majority of applicants or tenants are eligible to receive HUD assistance, and therefore fair hearing to determine eligibility on the basis of immigration status will be minimal. Accordingly, HUD concludes that this rule will not have a significant economic impact on a substantial number of small entities, and that to the extent possible, HUD has minimized the economic impact on all entities, consistent with the Secretary's responsibilities under section 143a.

Executive Order on Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has

determined that the policies contained in this final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule addresses immigration, a topic exclusively the province of the Federal government, and the effect is the direct result of the status that imposes the restriction against assistance to noncitizens, rather than a result of HUD's exercise of discretion in promulgating a rule to implement the statute.

Executive Order on the Family. The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the provisions of this final rule, while affecting the composition and well-being of families, are strictly the result of the statute that imposes the restriction. The only families upon whom the statute and the rule have an impact are those containing individuals with ineligible immigration status who are not receiving the benefit of assisted housing, or whose continued receipt of assisted housing is not necessary in order to avoid the division of the family. However, even for families that contain members with ineligible status, the rule strives to maintain the unity of the family under the regulatory provisions concerning special assistance to mixed families.

Regulatory Agenda. This final rule was listed as sequence number 1741 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57644), under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 215

Grant Programs—housing and community development, Rent

subsidies, Reporting and recordkeeping requirements.

24 CFR Part 235

Condominiums, Cooperatives, Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 247

Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 812

Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 850

Grant programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 886

Grant programs—housing and community development, Lead

poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 887

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 900

Grant programs—housing and community development, Rent subsidies.

24 CFR Part 904

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Homeownership, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 912

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Public housing.

Accordingly, title 24 of the Code of Federal Regulations, parts 200, 215, 235, 236, 247, 812, 880, 881, 882, 883, 884, 886, 887, 900, 904, 905, 912 and 960 are amended as follows.

PART 200—INTRODUCTION

1. The authority citation for part 200 is revised to read as follows:

Authority: 12 W.S.C. 1701–1715z-18; 42 U.S.C. 1436a and 3535(d).

2. A new subpart G, consisting of §§ 200.180 through 200.192, is added to read as follows:

Subpart G—Restrictions on Assistance to Noncitizens

Sec.

200.180 Applicability.

200.180a Requirements concerning documents.

200.181 Definitions.

200.182 General provisions.

200.183 Submission of evidence of citizenship or eligible immigration status.

200.184 Documents of eligible immigration status.

200.185 Verification of eligible immigration status.

200.186 Delay, denial, reduction or termination of assistance.

200.187 Preservation of mixed families and other families.

200.188 Proration of assistance.

200.189 Prohibition of assistance to noncitizen students.

200.190 Compliance with nondiscrimination requirements.

200.191 Protection from liability for project owners, State and local government agencies and officials.

200.192 Liability of ineligible tenants for reimbursement of benefits.

Subpart G—Restrictions on Assistance to Noncitizens

§ 200.180 Applicability.

(a) *Covered programs/assistance.* This subpart implements the statutory restrictions on providing financial assistance to benefit individuals who are not in eligible status with respect to citizenship or noncitizen immigration status. This subpart is applicable to financial assistance provided under:

(1) *Section 235 Program assistance.* Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program), and for which the implementing regulations are codified in 24 CFR part 235;

(2) *Section 236 Program assistance (below market rent only).* Section 236 of the National Housing Act (12 W.S.C. 1715z-1) (tenants paying below market rent only) (the Second 236 Program), and for which the implementing regulations are codified in 24 CFR part 236, subpart D; or

(3) *Rent Supplement Program assistance.* Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program), and for which the implementing regulations are codified in 24 CFR part 215.

(b) *When financial assistance is considered paid.* Covered financial assistance is considered to be provided (or paid), and the restrictions on providing covered financial assistance to noncitizens with ineligible immigration status are applicable as follows:

(1) *Payment under Section 235 Program.* Financial assistance is considered to be paid under the Section 235 program on behalf of a mortgagor when:

(i) The dwelling unit is subject to a mortgage insured under section 235 of the National Housing Act (and part 235 of this chapter); and

(ii) Assistance payments are made to the mortgagee on behalf of the mortgagor under a contract between the mortgagee and the Secretary in

accordance with section 235(b) of the National Housing Act, unless those assistance payments are pro-rated in accordance with § 200.188.

(2) *Payment under Section 236*

Program. Financial assistance is considered to be paid under the Section 236 program on behalf of a tenant or cooperative unit purchaser when:

(i) The project is subject to a mortgage insured or the project is assisted under section 236 of the National Housing Act (and part 236 of this chapter) for which interest reduction payments are paid under a contract between the mortgagee and the Secretary; and

(ii) The monthly rental charge paid to the owner for the dwelling unit is less than the HUD-approved market rent, whether or not rental assistance payments are also paid under a contract in accordance with section 236(f)(2) and part 236, subpart D, of this chapter, unless those assistance payments are prorated in accordance with § 200.188.

(3) *Payment under Rent Supplement*

Program. Financial assistance is considered to be paid under the Rent Supplement program administered under section 101 of the Housing and Urban Development Act of 1965 when rent supplement payments are paid under a contract between the project owner and the Secretary in accordance with that section and part 215 of this chapter, unless those assistance payments are prorated in accordance with § 200.188.

(c) *Covered individuals and entities.—*

(1) *Covered individuals/persons and families.* The provisions of this subpart apply to both applicants for assistance and persons already receiving assistance covered under this subpart (i.e., tenants, homebuyers, cooperative members; see definition of “tenant” in § 200.181). Unless the context clearly indicates otherwise, the terms “individual,” “person” or “family,” or the plural of these terms, as used in this subpart apply to both an applicant and a tenant, or an applicant family or a tenant family.

(2) *Covered entities.* The provisions of this subpart apply to both project owners (as defined in § 200.181) and mortgagees under the Section 235 homeownership program. Unless the context clearly indicates otherwise, the term “project owner” as used in this subpart includes mortgagee.

(d) *Administration of restrictions on providing assistance.* Project owners shall administer the restrictions on providing assistance to noncitizens with ineligible immigration status in accordance with the requirements of this subpart.

§ 200.180a Requirements concerning documents.

For any notice or document (decision, declaration, consent form, etc.) that this subpart requires the project owner to provide to an individual, or requires the project owner to obtain the signature of an individual, the project owner, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

§ 200.181 Definitions.

Assisted dwelling unit means a dwelling unit for which financial assistance is considered to be paid, as determined in accordance with § 200.180.

Child means a member of the family, other than the family head or spouse, who is under 18 years of age.

Citizen means a citizen or national of the United States.

Evidence of citizenship or eligible immigration status means the documents which must be submitted to evidence citizenship or eligible immigration status. (See § 200.186(b).)

Family. Except as may be otherwise specified in this subpart, the term "family" for purposes of this subpart shall have the same meaning as provided in the definition section of the regulations for each of the following programs: the Section 235 Program, Section 236 Program, and the Rent Supplement Program). (See, respectively, 24 CFR 235.5, 24 CFR 236.2, 24 CFR 215.1).

Financial assistance or covered financial assistance. See § 200.180.

Head of household means the adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

HUD means the Department of Housing and Urban Development.

INS means the U.S. Immigration and Naturalization Service.

Mixed family means a family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

National means a person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Noncitizen means a person who is neither a citizen nor nation of the United States.

Project owner means the person or entity that owns the housing project

containing the assisted dwelling unit. For purposes of this subpart, this term includes the mortgagee, in the case of a Section 235 mortgage.

Section 214 means Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the categories of eligible immigration status specified in Section 214.

Tenant means for the Rent Supplement program and the Section 236 program, an individual or a family renting an assisted dwelling unit or occupying such a dwelling unit as a cooperative member. For purposes of simplifying the language in this subpart to include the Section 235 homeownership program, the term tenant will also be used to include a homebuyer, where appropriate.

§ 200.182 General provisions.**(a) Restrictions on assistance.**

Financial assistance under the programs covered by this subpart is restricted to:

(1) *Citizens*; or

(2) *Noncitizens* who have eligible immigration status in one of the following categories:

(i) A noncitizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively) (immigrants). (This category includes a noncitizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161), (special agricultural worker), who has been granted lawful temporary resident status);

(ii) A noncitizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(iii) A noncitizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (refugee status); pursuant to the grant of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) (asylum status); or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on

account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(iv) A noncitizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) (parole status);

(v) A noncitizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) (threat to life or freedom); or

(vi) A noncitizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) (amnesty granted under INA 245A).

(b) *Family eligibility for assistance*. (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section;

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of three types of assistance provided in § 200.187. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in § 200.187.

§ 200.183 Submission of evidence of citizenship or eligible immigration status.

(a) *General*. Eligibility for assistance or continued assistance under a program covered by this subpart is contingent upon a family's submission to the project owner of the documents described in paragraph (b) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the family members may exercise the election not to content to have eligible immigration status as provided in paragraph (e) of this section, and the provisions of § 200.187 shall apply.

(b) *Evidence of citizenship or eligible immigration status*. Each family member, regardless of age, must submit the following evidence to the project owner.

(1) For citizens, the evidence consists of a signed declaration of U.S. citizenship;

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a covered program on June 19, 1995 the evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) Proof of age document.

(3) For all other noncitizens, the evidence consists of:

(i) A signed declaration of eligible immigration status;

(ii) The INS documents listed in § 200.184; and

(iii) A signed verification form.

(c) *Declaration.* (1) For each family member who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the project owner a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status.

(i) For each adult, the declaration must be signed by the adult.

(ii) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) The written declaration may be incorporated as part of the application for housing assistance or may constitute a separate document.

(d) *Verification consent form*—(1) *Who signs.* Each noncitizen who declares eligible immigration status must sign a verification consent form as follows.

(i) For each adult, the form must be signed by the adult.

(ii) For each child, the form must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) *Notice of release of evidence by project owner.* The verification consent form shall provide that evidence of eligible immigration status may be released by the project owner without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(i) HUD, as required by HUD; and

(ii) The INS for purposes of verification of the immigration status of the individual.

(3) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the future use or transmission of the evidence or other information by the INS.

(e) *Individuals who do not contend that they have eligible status.* If one or more members of a family elect not to contend that they have eligible immigration status, and other members of the family establish their citizenship

or eligible immigration status, the family may be eligible for assistance under §§ 200.187 or 200.188, despite the fact that no declaration or documentation of eligible status is submitted for one or more members of the family. The family, however, must identify to the project owner, the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(f) *Notification of requirements of Section 214*—(1) *When notice is to be issued.* Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible status as provided by paragraph (e) of this section, shall be given by the project owner as follows:

(i) *Applicant's notice.* The notification described in paragraph (f)(1) of this section be given to each applicant at the time of application for assistance. Applicants whose applications are pending on June 19, 1995 shall be notified of the requirement to submit evidence of eligible status as soon as possible after June 19, 1995.

(ii) *Tenant's notice.* The notification described in paragraph (f)(1) of this section shall be given to each tenant at the time of, and together with, the project owner's notice of regular reexamination of tenant income, but not later than one year following June 19, 1995.

(iii) *Timing of mortgagor's notice.* A mortgagor receiving Section 235 assistance must be provided the notification described in paragraph (f)(1) of this section in accordance with § 235.13(b)(2) of this chapter.

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of evidence of citizenship or eligible immigration status as required by paragraph (a) of this section;

(ii) Describe the type of evidence that must be submitted, and state the time period in which that evidence must be submitted (see paragraph (g) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see § 200.186 concerning INS appeal, and informal hearing process by the project owner) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Tenants also shall be informed of how to obtain assistance

under the preservation of families provisions of § 200.187.

(g) *When evidence of eligible status is required to be submitted.* The project owner shall require evidence of eligible status to be submitted at the times specified in paragraph (g) of this section, subject to any extension granted in accordance with paragraph (h) of this section.

(1) *Applicants.* For applicants, project owners must ensure that evidence of eligible status is submitted not later than the date the project owner anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see § 200.185(a)).

(2) *Tenants.* For tenants (i.e., persons already receiving the benefit of assistance in a covered program on June 19, 1995, evidence of eligible status is required to be submitted as follows:

(i) For financial assistance in the form of rent supplement payments or Section 236 basic rent tenancy or rental assistance payments, the tenant shall, in accordance with the provisions of §§ 215.55(a) and 236.80(a) of this chapter, submit the required evidence at the first regular reexamination after June 19, 1995.

(ii) For financial assistance in the form of Section 235 assistance payments, the mortgagor shall submit the required evidence in accordance with § 235.13(c) of this chapter.

(3) *New occupants of assisted units.* For any new occupant of an assisted unit (e.g., a new family member comes to reside in the assisted unit), the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a program covered by this subpart, evidence of eligible status is required to be submitted in accordance with the requirements of this subpart unless the family already has submitted the evidence to the project owner for a covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any covered program.

(h) *Extensions of time to submit evidence of eligible status.*

(1) *When extension must be granted.* The project owner shall extend the time, provided in paragraph (g) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under § 200.183(a) certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence; and prompt and diligent effort will be undertaken to obtain the evidence.

(2) *Prohibition on indefinite extension period.* Any extension of time, if granted, shall be for a specific period of time. The additional time provided should be sufficient to allow the individual the time to obtain the evidence needed. The project owner's determination of the length of the extension needed shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The project owner's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted. If the extension is denied, the notice shall explain the reasons for denial of the extension.

(i) *Failure to submit evidence or to establish eligible status.* If the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (h) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the project owner shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance with the provisions of §§ 200.186 and 200.187.

§ 200.184 Documents of eligible immigration status.

(a) *General.* A project owner shall request and review original documents of eligible immigration status. The project owner shall retain photocopies of the documents for its own records and return the original documents to the family.

(b) *Acceptable evidence of eligible immigration status.* The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with § 200.185.

(1) Form I-551, Alien Registration Receipt Card (for permanent resident aliens);

(2) Form I-94, Arrival-Departure Record, with one of the following annotations:

(i) "Admitted as Refugee Pursuant to Section 207";

(ii) "Section 208" or "Asylum";

(iii) "Section 243(h)" or "Deportation stayed by Attorney General";

(iv) "Paroled Pursuant to Sec. 212(d)(5) of the INA";

(3) If Form I-94, Arrival-Departure Record, is not annotated, then accompanied by one of the following documents:

(i) A final court decision granting asylum (but only if no appeal is taken);

(ii) A letter from an INS asylum officer granting asylum (if application is filed on or after October 1, 1990) or from an INS district director granting asylum (if application filed before October 1, 1990);

(iii) A court decision granting withholding or deportation; or

(iv) A letter from an INS asylum officer granting withholding of deportation (if application filed on or after October 1, 1990).

(4) Form I-688, Temporary Resident Card, which must be annotated "Section 245A" or "Section 210";

(5) Form I-688B, Employment Authorization Card, which must be annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12";

(6) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(c) *Other acceptable evidence.* If other documents are determined by the INS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the **Federal Register**.

§ 200.185 Verification of eligible immigration status.

(a) *When verification is to occur.* Verification of eligible immigration status shall be conducted by the project owner simultaneously with verification of other aspects of eligibility for assistance or continued eligibility for assistance under a covered program. The project owner shall verify eligible immigration status in accordance with the INS procedures described in this section.

(b) *Primary verification.*—(1) *Automated verification system.* Primary verification of the immigration status of the person is conducted by the project owner through the INS automated system (INS Systematic Alien

Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(2) *Failure of primary verification to confirm eligible immigration status.* If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(c) *Secondary verification.*—(1) *Manual search of INS records.*

Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The project owner must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance covered by this subpart.

(2) *Secondary verification initiated by project owner.* Secondary verification is initiated by the project owner forwarding photocopies of the original INS documents listed in § 200.184 (front and back), attached to the INS document verification request form G-845S (Document Verification Request), or such other form specified by the INS to a designated INS office for review. (Form G-845S is available from the local INS Office.)

(3) *Failure of secondary verification to confirm eligible immigration status.* If the secondary verification does not confirm eligible immigration status, the project owner shall issue to the family the notice described in § 200.186(d), which includes notification of appeal to the INS of the INS finding on immigration status (see § 200.186(d)(4)).

(d) *Exemption from liability for INS verification.* The project owner shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

§ 200.186 Delay, denial, reduction or termination of assistance.

(a) *General.* Assistance to a family may not be delayed, denied, reduced or terminated because of the immigration status of a family except as provided in this section.

(b) *Restrictions on delay, denial, reduction or termination of assistance.*—(1) *Restrictions on reduction, denial or termination of assistance.* Assistance to an applicant shall not be reduced or denied, and assistance to a tenant shall not be delayed, denied, reduced, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration

documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the assisted dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the assisted dwelling unit;

(iv) The INS appeals process under § 200.186(e) has not been concluded; or

(v) For a tenant, the informal hearing process under § 200.186(f) has not been concluded.

(2) *Restrictions on denial or termination.* Assistance to an applicant shall not be denied, and assistance to a tenant shall not be terminated, on the basis of ineligible immigration status of a family member if:

(i) Assistance is prorated in accordance with § 200.188;

(ii) Assistance for a mixed family is continued in accordance with § 200.187; or

(iii) Deferral of termination of assistance is granted in accordance with § 200.187.

(3) *When delay of assistance to an applicant is permissible.* Assistance to an applicant may be delayed after the conclusion of the INS appeal process, but not denied until the conclusion of the informal hearing process, if an informal hearing is requested by the family.

(c) *Events causing denial or termination of assistance.*—(1) *General.* Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in § 200.183(g) or by the expiration of any extension granted in accordance with § 200.183(h); or

(ii) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and second verification does not verify eligible immigration status of a family member; and

(A) The family does not pursue INS appeal or informal hearing rights as provided in this section; or

(B) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

(2) *Termination of assisted occupancy.* For termination of assisted occupancy, see paragraph (i) of this section.

(d) *Notice of denial or termination of assistance.* The notice of denial or termination of assistance shall advise the family:

(1) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(2) That the family may be eligible for prorated assistance as provided under § 200.188;

(3) In the case of a tenant, the criteria and procedures for obtaining relief under the preservation of families provision in § 200.187;

(4) That the family has a right to request an appeal to the INS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal in accordance with the procedures of paragraph (e) of this section;

(5) That the family has a right to request an informal hearing with the project owner either upon completion of the INS appeal or in lieu of the INS appeal as provided in paragraph (f) of this section;

(6) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the informal hearing process.

(e) *Appeal by applicant to the INS.*—

(1) *Submission of request for appeal.* Upon receipt of notification by the project owner that INS secondary verification failed to confirm eligible immigration status, the project owner shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the project owner's notification, to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the project owner with a copy of the written request for appeal and proof of mailing. For good cause shown, the project owner shall grant the family an extension of the time within which to request an appeal.

(2) *Documentation to be submitted as part of appeal to INS.* The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS document verification request form G-845S (used to process the secondary verification request) or such other form specified by the INS, and a cover letter indicating that the family is request an appeal of the INS immigration status

verification results. (Form G-845S is available from the local INS Office.)

(3) *Decision by INS.*—(i) *When decision will be issued.* The INS will issue to the family, with a copy to the project owner, a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the family and project owner of the reasons for the delay.

(ii) *Notification of INS decision and of informal hearing procedures.* When the project owner receives a copy of the INS decision, the project owner shall notify the family of its right to request an informal hearing on the PHA's ineligibility determination in accordance with the procedures of paragraph (f) of this section.

(4) *No delay, denial, reduction, or termination of assistance until completion of INS appeal process; direct appeal to INS.* Pending the completion of the INS appeal under this section, assistance may not be delayed, denied, reduced or terminated on the basis of immigration status.

(f) *Informal hearing.*—(1) *When request for hearing is to be made.* After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, the family may request that the project owner provide a hearing. This request must be made either within 14 days of the date the project owner mails or delivers the notice under paragraph (d) of this section, or within 14 days of the mailing of the INS appeal decision issued in accordance with paragraph (e) of this section (established by the date of postmark).

(2) *Extension of time to request hearing.* The project owner shall extend the period of time for requesting a hearing (for a specified period) upon good cause shown.

(3) *Informal hearing procedures.* A family who submits a timely request for a hearing with the project owner shall have an opportunity for:

(i) *Hearing before an impartial individual.* The family shall be provided a hearing before any person(s) designated by the project owner (including an officer or employee of the project owner), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(ii) *Examination of evidence.* The family shall be provided the opportunity to examine and copy at the individual's expense, at a reasonable time in advance of the hearing, any

documents in the possession of the project owner pertaining to the family's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(iii) *Presentation of evidence and arguments in support of eligible status.* The family shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(iv) *Controverting evidence of the project owner.* The family shall be provided the opportunity to controvert evidence relied upon by the project owner and to confront and cross-examine all witnesses on whose testimony or information the project owner relies;

(v) *Representation.* The family shall be entitled to be represented by an attorney, or other designee, at the family's expense, and to have such person make statements on the family's behalf;

(vi) *Interpretive services.* The family shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the family or project owner, as may be agreed upon by both parties; and

(vii) *Hearing to be recorded.* The family shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to, be provided by the project owner).

(4) *Hearing decision.* The project owner shall provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 days of the date of the informal hearing. The decision shall state the basis for the decision.

(g) *Judicial relief.* A decision against a family member, issued in accordance with paragraph (e) or (f) of this section, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(h) *Retention of documents.* The project owner shall retain for a minimum of 5 years the following documents that may have been submitted to the project owner by the family, or provided to the project owner as part of the INS appeal or the informal hearing process:

(1) The application for financial assistance;

(2) The form completed by the family for income re-examination;

(3) Photocopies of any original documents (front and back), including original INS documents;

(4) The signed verification consent form;

(5) The INS verification results;

(6) The request for an INS appeal;

(7) The final INS determination;

(8) The request for an informal hearing; and

(9) The final hearing decision.

(i) *Termination of assisted occupancy.*

Assisted occupancy is terminated by:

(1) If permitted under the lease, the project owner notifying the tenant that because of the termination of assisted occupancy the tenant is required to pay the HUD-approved market rent for the dwelling unit.

(2) The project owner and tenant entering into a new lease without financial assistance.

(3) The project owner evicting the tenant. An owner may continue to receive assistance payments if action to terminate the tenancy under an assisted lease is promptly initiated and diligently pursued, in accordance with the terms of the lease, and if eviction of the tenant is undertaken by judicial action pursuant to State and local law. Action by the owner to terminate the tenancy and to evict the tenant must be in accordance with 24 CFR part 247 and other HUD requirements. For any jurisdiction, HUD may prescribe a maximum period during which assistance payments may be continued during eviction proceedings and may prescribe other standards of reasonable diligence for the prosecution of eviction proceedings.

§ 200.187 Preservation of mixed families and other families.

(a) *Assistance available for mixed families.*—(1) *Assistance available for tenant mixed families.* For a mixed family assisted under a program by this subpart on June 19, 1995, and following completion of the appeals and informal hearing procedures provided in § 200.186 if utilized by the family, one of the following three types of assistance is available to the family depending upon the family's eligibility for such assistance:

(i) Continued assistance (see paragraph (b) of this section);

(ii) Temporary deferral of termination of assistance (see paragraph (c) of this section); or

(iii) Prorated assistance (see § 200.188; a mixed family must be provided prorated assistance if the family so requests).

(2) *Assistance available for applicant mixed families.* Prorated assistance is also available for mixed families

applying for assistance as provided in § 200.188.

(3) *Assistance available to other families in occupancy.* For families receiving assistance under a program covered by this subpart on June 19, 1995 and who have no members with eligible immigration status, temporary deferral of termination of assistance is available to families without any eligible members in accordance with paragraph (c) of this section.

(b) *Continued assistance.* A mixed family shall receive continued housing assistance if all of the following conditions are met:

(1) The family was receiving assistance under a program covered by this subpart on June 19, 1995;

(2) The family's head of household or spouse has eligible immigration status as described in § 200.182; and

(3) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(c) *Temporary deferral of termination of assistance.*—(1) *Eligibility for this type of assistance.* If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family shall be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(2) *Conditions for granting temporary deferral of termination of assistance.* The project owners shall grant a temporary deferral of termination of assistance to a mixed family if one of the following conditions is met:

(i) The family demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful (for purposes of this section, reasonable efforts include seeking information from, and pursuing leads obtained from the State housing

agency, the city government, local newspapers, rental agencies and the owner);

(ii) The vacancy rate for affordable housing of appropriate size is below five percent in the housing market for the area in which the project is located; or

(iii) The consolidated plan, as described in 24 CFR part 91 and if applicable to the covered program, indicates that the local jurisdiction's housing market lacks sufficient affordable housing opportunities for households having a size and income similar to the family seeking the deferral.

(3) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of three years.

(4) *Notification requirements for beginning of each deferral period.* At the beginning of each deferral period, the project owner must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(5) *Determination of availability of affordable housing at end of each deferral period.* Before the end of each deferral period, the project owner must:

(i) Make a determination that one of the three conditions specified in paragraph (c)(2) of this section continues to be met (note: affordable housing will be determined to be available if the vacancy rate is five percent or greater, or if the consolidated plan (If applicable), the owner's knowledge and the tenant's evidence indicate that other affordable housing is available). *and*

(ii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceed three years), and a determination was made that other affordable housing is not available; *or*

(iii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed three years, or a determination has been made that other affordable housing is available.

(d) *Option to select proration of assistance at end of deferral period.* A family who is eligible for, and receives temporary deferral of termination of assistance, may request, and the project owner shall provide proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.

(e) *Notification of decision on family preservation assistance.* A project owner shall notify the family of its decision concerning the family's qualification for assistance under this section. If the family is ineligible for assistance under this section, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the family of any applicable appeal rights.

§ 200.188 Proration of assistance.

(a) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance under § 200.187(b), or other than a family who is eligible for and requests and receives temporary deferral of termination of assistance under § 200.187(c).

(b) *Method for prorating assistance.* For each of the three types of assistance covered by this subpart, the project owner shall prorate the family's assistance as follows:

(1) *Proration under Rent Supplement Program.* If the household participates in the Rent Supplement Program, the rent supplement paid on the household's behalf shall be the rent supplement the household would otherwise be entitled to, multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of eligible persons in the household;

(2) *Proration under Section 235 Program.* If the household participates in the Section 235 Program, the interest reduction payments paid on the household's behalf shall be the payments the household would otherwise be entitled to, multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of eligible persons in the household;

(3) *Proration under Section 236 Program without the benefit of additional assistance.* If the household participates in the Section 236 Program without the benefit of any additional assistance, the household's rent shall be increased above the rent the household would otherwise pay by an amount equal to the difference between the market rate rent for the unit and the rent

the household would otherwise pay multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household;

(4) *Proration under Section 236 Program with the benefit of additional assistance.* If the household participates in the Section 236 Program with the benefit of additional assistance under the rent supplement, rental assistance payment or Section 8 programs, the household's rent shall be increased above the rent the household would otherwise pay by:

(i) An amount equal to the difference between the market rate rent for the unit and the basic rent for the unit multiplied by a fraction, the denominator of which is the number of people in the household, and the numerator of which is the number of ineligible persons in the household, plus;

(ii) An amount equal to the rent supplement, housing assistance payment or rental assistance payment the household would otherwise be entitled to multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household.

§ 200.189 Prohibition of assistance to noncitizen students.

(a) *General.* The provisions of §§ 200.187 and 200.188, permitting continued assistance, prorated assistance or temporary deferral of termination of assistance for certain families, do not apply to any person who is determined to be a noncitizen student, as defined in paragraph (b) of this section, or the family of the noncitizen student, as described in paragraph (c) of this section.

(b) *Noncitizen student.* For purposes of this part, a noncitizen student is defined as a noncitizen who:

(1) Has a residence in a foreign country that the person has no intention of abandoning;

(2) Is a bona fide student qualified to pursue a full course of study; and

(3) Is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such person and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant

student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn).

(c) *Family of noncitizen student.* The prohibition on providing assistance to a noncitizen student as described in paragraph (a) of this section also extends to the noncitizen spouse of the noncitizen student and minor children of any noncitizen student if the spouse or children are accompanying the student or following to join such student. The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

§ 200.190 Compliance with nondiscrimination requirements.

The project owner shall administer the restrictions on use of assisted housing by noncitizens with ineligible immigration status imposed by this part in conformity with the nondiscrimination requirements of, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–5) and the implementing regulations in 24 CFR part 1, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations in 24 CFR part 8, the Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations in 24 CFR part 100, and other civil rights statutes cited in the applicable program regulations. These statutes prohibit, among other things, discriminatory practices on the basis of race, color, national origin, sex, religion, age, disability and familial status in the provision of housing.

§ 200.191 Protection from liability for project owners, State and local government agencies and officials.

(a) *Protection from liability for project owners.* HUD will not take any compliance, disallowance, penalty, or other regulatory action against a project owner with respect to any error in its determination of eligibility for financial assistance based on citizenship or immigration status:

(1) If the project owner established eligibility based upon verification of eligible immigration status through the verification system described in § 200.185.

(2) Because the project owner was required to provide an opportunity for the family to submit evidence in accordance with § 200.183;

(3) Because the project owner was required to wait for completion of INS verification of immigration status in accordance with § 200.185;

(4) Because the project owner was required to wait for completion of the INS appeal process provided in accordance with § 200.186(e); or

(5) Because the project owner was required to provide an informal hearing in accordance with § 200.186(f).

(b) *Protection from liability for State and local government agencies and officials.* State and local government agencies and officials shall not be liable for the design or implementation of the verification system described in § 200.185 and the informal hearings provided under § 200.186, as long as the implementation by the State and local government agency or official is in accordance with prescribed HUD rule and requirements.

§ 200.192 Liability of ineligible tenants for reimbursement of benefits.

Where a tenant has received the benefit of HUD financial assistance to which the tenant was not entitled because the tenant intentionally misrepresented “eligible status” (as defined in § 200.182), the ineligible tenant is responsible for reimbursing HUD for the assistance improperly paid. If the amount of the assistance is substantial, the project owner is encouraged to refer the case to the HUD Regional Inspector General’s office for further investigation. Possible criminal prosecution may follow based on the False Statements Act (18 U.S.C. 1001 and 1010).

PART 215—RENT SUPPLEMENT PAYMENTS

3. The authority citation for part 215 continues to read as follows:

Authority: 12 U.S.C. 1701s; 42 U.S.C. 3535(d).

4. In § 215.20, paragraph (b)(2) is amended by adding a new sentence at the end to read as follows:

§ 215.20 Qualified tenant.

* * * * *

(b) * * *

(2) * * * For restrictions on financial assistance to noncitizens with ineligible immigration status, see part 200, subpart G, of this chapter.

* * * * *

5. In § 215.25, paragraph (a)(1) is revised to read as follows:

§ 215.25 Determination of eligibility.

(a)(1) The housing owner shall determine eligibility following procedures prescribed by the Commissioner when processing applications for admission and tenant requirements for assistance. The requirements of part 200, subpart G, of this chapter govern the submission and

verification of citizenship information and eligible immigration status for applicants, and the procedures for denial or proration of assistance based upon a failure to establish eligible immigration status.

* * * * *

6. A new § 215.26 is added to read as follows:

§ 215.26 Determination of eligible immigration status of applicants and tenants; protection from liability.

(a) *Housing owner’s obligation to make determination.* A housing owner shall obtain and verify information regarding the citizenship or immigration status of applicants and tenants in accordance with the procedures of part 200, subpart G, this chapter.

(b) *Protection from liability.* HUD will not take any compliance, disallowance, penalty or other regulatory action against a housing owner with respect to any error in its determination that an individual is eligible for financial assistance based upon citizenship or eligible immigration status, as provided in § 200.189 of this chapter.

7. Section 215.55 is amended by adding two sentences at the end of paragraph (a), by adding one sentence at the end of paragraph (b), and by adding two sentences at the end of paragraph (c), to read as follows:

§ 215.55 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of part 200, subpart G, of this chapter concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of part 200, subpart G, of this chapter, concerning obtaining and processing information on the citizenship or eligible immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995 when a new family member has been added, the owner shall follow the requirements of part 200, subpart G, of this chapter, concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) * * * Assistance also may be terminated in accordance with any requirements of the lease or with HUD requirements. The procedures of part 200, subpart G, of this chapter, apply when termination is based upon a determination that the tenant does not have eligible immigration status.

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

8. The authority citation for part 235 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z; 42 U.S.C. 3535(d).

9. Section 235.2 is amended by adding a new paragraph (f) to read as follows:

§ 235.2 Basic program outline.

* * * * *

(f) Evidence of citizenship or eligible immigration status shall be submitted by the applicant or mortgagor and verified in accordance with part 200, subpart G of this chapter and § 235.13.

10. Section 235.10 is amended by adding a new paragraph (c)(2)(iii) and by adding a sentence at the end of paragraph (e), to read as follows:

§ 235.10 Eligible mortgagors.

* * * * *

(c) * * *
(2) * * *

(iii) A new member is added to the family in which case evidence of citizenship or eligible immigration status also shall be submitted, in accordance with part 200, subpart G, of this chapter.

* * * * *

(e) * * * Eligibility for assistance under this subpart also requires citizenship or eligible immigration status, as determined in accordance with part 200, subpart G, of this chapter, except that citizenship or eligible immigration status shall not be required of a mortgagor whose assistance contract was executed before June 19, 1995 and remains unchanged after that date. (See § 235.13(c).)

* * * * *

11. A new § 235.13 is added to read as follows:

§ 235.13 Special requirements concerning citizenship or eligible immigration status.

(a) *General.* Except as may be supplemented by the provisions of this section, the requirements of 24 CFR part 200, subpart G, concerning restrictions on the use of assisted housing by noncitizens with ineligible immigration status are applicable to mortgagees and mortgagors covered by the Section 235 Program with the exception of mortgagors:

(1) Whose assistance contracts were executed before June 19, 1995 and remain unchanged after that date; or

(2) Who refinance their Section 235 mortgages, which were executed before June 19, 1995 and whose assistance

contracts were unchanged after that date, with mortgages insured under section 235(r) of the National Housing Act (12 U.S.C. 1715z).

(b) *Notification of requirements to submit evidence of eligible status—(1) Notice to applicants.* A mortgagee shall notify applicants, including applicants whose names are on a waiting list on June 19, 1995, that financial assistance is contingent upon the submission and verification, as appropriate, of evidence of eligible citizenship and immigration status as required under 24 CFR part 200, subpart G.

(2) *Notice to mortgagors.* A mortgagee also shall notify mortgagors (except Section 235(r) mortgagors) whose contracts are executed after June 19, 1995 that continued financial assistance is contingent upon the submission and verification, as appropriate, of the evidence of eligible status required in 24 CFR part 200, subpart G. This notice requirement also shall apply to mortgagors whose contracts are revised, at the request of the mortgagor, after June 19, 1995.

(c) *Submission of evidence of eligible status—(1) When evidence of eligible immigration status is to be submitted.* A mortgagee shall obtain evidence concerning an applicant or mortgagor's citizenship or eligible immigration status, as required by 24 CFR part 200, subpart G, at the following times:

(i) Application for assistance; and
(ii) The first recertification of family income and composition conducted after June 19, 1995, in accordance with § 235.10 or § 235.350. The requirements of this section are not applicable to mortgagors whose assistance contracts were executed before June 19, 1995 and remain unchanged after that date, or to mortgagors who refinance their section 235 mortgages, which were executed before June 19, 1995 and whose assistance contracts remain unchanged after such date, with mortgages insured under section 235(r) of the National Housing Act.

(2) *Extensions of time to submit evidence of eligible status.* The provisions of § 200.183(e) of this chapter, concerning extension of time within which to submit evidence of eligible status are applicable.

(d) *Certification by mortgagee—(1) General.* The mortgagee shall verify the evidence submitted in the case of an applicant or mortgagor declaring eligible immigration status, in accordance with the requirements of part 200, subpart G, of this chapter, and certify to the Secretary that the required information concerning citizenship or eligible immigration status has been submitted and verified (if applicable) for all

persons for whom the evidence is required. If the applicant or mortgagor's citizenship or eligible immigration status is not established as a result of the process required under 24 CFR part 200, subpart G, the mortgagee shall notify the applicant or mortgagor in accordance with the requirements of 24 CFR part 200, subpart G concerning notification of the possibility of denial or termination of assistance, and, if applicable, of additional assistance that may be available to the applicant or mortgagor.

(2) *Invalid certification.* (i) If the mortgagee has certified to the Secretary in accordance with paragraph (d)(1) of this section that the required information concerning citizenship or eligible immigration status has been submitted and verified (if applicable), and the Secretary subsequently determines that the procedures required by this section and 24 CFR part 200, subpart G, were not followed, the following actions will be taken:

(A) The mortgagee will be required to repay to the Secretary the full amount of assistance payments made on behalf of the mortgagor under this part; and
(B) No additional assistance payments may be made on behalf of the mortgagor.

(ii) The Secretary may permit the resumption of assistance payments if all persons residing in the dwelling whose status was not determined to be eligible have moved from the dwelling unit, or their status has been determined to be eligible, in accordance with 24 CFR part 200, subpart G.

(iii) If the mortgagee has certified to the Secretary in accordance with paragraph (c)(1) of this section that the required information concerning citizenship or eligible immigration status has been submitted and verified (if applicable), and the Secretary subsequently determines that the mortgagee's eligible status determination was based on fraudulent documents, or was otherwise defective, although the determination was made in accordance with required procedures, the following actions will be taken:

(A) The mortgagor will be required to repay to the Secretary the full amount of assistance payments made on behalf of the mortgagor under this part; and
(B) No additional assistance payments may be made on behalf of the mortgagor.

(iv) The Secretary's right to repayment from the mortgagor under paragraph (d)(2)(i) of this section shall not affect or limit the Secretary's right to refund of overpaid assistance payments from the mortgagee as provided in § 235.361(b).

(e) *Mortgage insurance commitments.* Commitments to insure mortgages under this part will not be issued or extended

unless the mortgagee has made the certification required under paragraph (d) of this section.

(f) *Other related provisions.* See § 235.10 for eligibility requirements, specifically citizenship and eligible immigration status; § 235.350 for the mortgagor's required recertification, including provision of information concerning eligible immigration status; and generally part 200, subpart G, of this chapter, for the provisions on restrictions to providing assistance to noncitizens with ineligible immigration status.

12. In § 235.325, a new paragraph (c) is added to read as follows:

§ 235.325 Qualified cooperative members.
* * * * *

(c) Eligibility as a cooperative member under this subpart also requires eligible status with respect to citizenship or eligible immigration status determined in accordance with 24 CFR part 200, subpart G. (See § 235.13.)

13. Section 235.350 is amended by adding a new paragraph (a)(2)(iii) to read as follows:

§ 235.350 Mortgagor's required recertification.

(a) * * *
(2) * * *

(iii) A new member is added to the family who is not born in the United States (except for a mortgagor described in 235.13(a) (1) or (2)).

* * * * *

14. In § 235.375, a new paragraph (b)(6) is added to read as follows:

§ 235.375 Termination, suspension, or reinstatement of the assistance payments contract.
* * * * *

(b) * * *

(6) Failure to provide evidence of citizenship or eligible immigration status in accordance with 24 CFR part 200, subpart G:

(i) For a new member of the family, other than a child born in the United States, except with respect to a mortgagor described under § 235.13(a) (1) and (2);

(ii) At the first recertification of an assistance contract, except with respect to a mortgagor described in § 235.13(a)(1) and (2); or

(iii) Upon modification of an existing assistance contract

* * * * *

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

15. The authority citation for part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z-1; 42 U.S.C. 3535(d).

16. Section 236.2 is amended by:

1. Amending the definition of "Adjusted income" by redesignating paragraphs (a), (b), (c), (d) introductory text, (d)(1), (d)(2), (d)(3), and (e), as paragraphs (1), (2), (3), (4) introductory text, (4)(i), (4)(ii), (4)(iii), and (5), respectively, and by removing the cross-reference in newly designated paragraph (4)(ii) that reads "paragraph (c) of this section" and adding in its place "paragraph (3) of this definition";

2. Amending the definition of "Handicapped Person" by redesignating paragraphs (a), (b), and (c) to read paragraphs (1), (2), and (3), respectively;

3. Amending the definition of "Live-in aide" by redesignating paragraphs (a), (b), and (c), to read paragraphs (1), (2), and (3), respectively; and

4. Amending the definition of "Qualified Tenant" by redesignating paragraphs (a) and (b) as paragraphs (1) and (2) respectively, and by adding a new paragraph (3), to read as follows:

§ 236.2 Definitions.
* * * * *

Qualified Tenant
* * * * *

(3) For restrictions on financial assistance to noncitizens with ineligible immigration status, see 24 CFR part 200, subpart G.

* * * * *

17. In § 236.70, paragraph (a)(1) is revised to read as follows:

§ 236.70 Occupancy requirements.

(a)(1) The housing owner shall determine eligibility following procedures prescribed by the Commissioner when processing applications for admission. The requirements of 24 CFR part 200, subpart G, govern the submission and verification of information related to citizenship and eligible immigration status for those applicants who seek admission at a below market rent.

* * * * *

18. Section 236.80 is amended by adding two sentences at the end of paragraph (a), by adding one sentence at the end of paragraph (b), and by adding three sentences at the end of paragraph (c), to read as follows:

§ 236.80 Reexamination of income.

(a) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 200, subpart G, concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter,

at each regular reexamination, the owner shall follow the requirements of 24 CFR part 200, subpart G, concerning obtaining and processing information on the citizenship or eligible immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the owner shall follow the requirements of 24 CFR part 200, subpart G, concerning obtaining and processing information on the citizenship or eligible immigration status of any new family member.

(c) * * * Assistance also may be terminated in accordance with any requirements of the lease with HUD requirements. When termination is based upon a determination that the tenant does not have eligible immigration status, the procedures of 24 CFR part 200, subpart G, apply. The procedures include the provision of assistance to certain mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination.

19. Section 236.710 is amended by adding a new sentence at the end of this section to read as follows:

§ 236.710 Qualified tenant.

* * * For restrictions on financial assistance to noncitizens with ineligible immigration status, see 24 CFR part 200, subpart G.

20. In § 236.715, paragraph (a) is revised to read as follows:

§ 236.715 Determination of eligibility.

(a) The housing owner shall determine eligibility following procedures prescribed by the Commissioner when processing applications for admission and tenant applications for assistance. The requirements of 24 CFR part 200, subpart G, govern the submission and verification of information related to citizenship and eligible immigration status for applicants, and the procedures for denial of assistance based upon a failure to establish eligible immigration status.

* * * * *

21. A new § 236.765 is added to subpart D to read as follows:

§ 236.765 Determination of eligible immigration status of applicants and tenants; protection from liability.

(a) *Housing owner's obligation to make determination.* A housing owner shall obtain and verify information regarding the citizenship or immigration status of applicants and tenants in accordance with the procedures of 24 CFR part 200, subpart G.

(b) *Protection from liability.* HUD will not take any compliance, disallowance, penalty or other regulatory action against a housing owner with respect to any error in its determination to make an individual eligible for financial assistance based upon citizenship or eligible immigration status, as provided in 24 CFR part 200, subpart G.

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

22. The authority citation for part 247 continues to read as follows:

Authority: 12 U.S.C. 1701q, 1701s, 1715b, 1715l, and 1715z–1; 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

23. In § 247.3, paragraph (c)(3) is revised to read as follows:

§ 247.3 Entitlement of tenants to occupancy.

* * * * *

(c) * * *

(3) Failure of the tenant to supply on time all required information on the income and composition, or eligibility factors, of the tenant household (including, but not limited to, failure to submit required evidence of citizenship or eligible immigration status, in accordance with 24 CFR part 200, subpart G, failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 200, subpart T, or 24 CFR part 750 (as appropriate), or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 200, subpart V, or 24 CFR part 760 (as appropriate), or to knowingly provide incomplete or inaccurate information; and

* * * * *

PART 812—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

24. The authority citation for part 812 is revised to read as follows:

Authority: 42 U.S.C. 1436a, 1437a, and 3535(d).

25. In § 812.1, paragraph (a) is amended by removing the word “and” following the semicolon in paragraph (a)(1); by removing the period at the end of paragraph (a)(2) and replacing with “and”; and by adding a new paragraph (a)(3), to read as follows:

§ 812.1 Purpose and applicability.

(a) * * *

(3) Implements the statutory prohibition against making assistance

under the United States Housing Act of 1937 (“Act”) (42 U.S.C. 1437) available for the benefit of noncitizens with ineligible immigration status.

* * * * *

26. Section 812.2 is amended by adding definitions in alphabetical order for the terms “Child,” “Citizen,” “Evidence of citizenship or eligible immigration status,” “HA,” “Head of household,” “HUD,” “INS,” “Mixed family,” “National,” “Noncitizen,” and “Responsible entity,” “Section 214” and “Section 214 covered programs” to read as follows:

§ 812.2 Definitions.

* * * * *

Child. A member of the family, other than the family head or spouse, who is under 18 years of age.

Citizen. A citizen or national of the United States.

* * * * *

Evidence of citizenship or eligible immigration status. The documents which must be submitted to evidence citizenship or eligible immigration status. (See § 812.6(b).)

* * * * *

HA. A housing authority—either a public housing agency or an Indian housing authority, or both.

* * * * *

Head of household. The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

HUD. The Department of Housing and Urban Development.

INS. The U.S. Immigration and Naturalization Service.

* * * * *

Mixed family. A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Noncitizen. A person who is neither a citizen nor national of the United States.

Responsible entity. The person or entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status:

(1) For the Section 8 Certificate, the Section 8 Housing Voucher, and the Section 8 Moderate Rehabilitation programs, the housing authority (HA) administering the program under an ACC with HUD.

(2) For all other Section 8 programs, the owner.

Section 214. Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the categories of eligible immigration status specified in Section 214.

Section 214 covered programs.

Programs to which the restrictions imposed by Section 214 apply are programs that make available financial assistance pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437–1440), Section 235 or Section 236 of the National Housing Act (12 U.S.C. 1715z and 1715z–1) and Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

* * * * *

27. Part 812 is amended by redesignating §§ 812.1 through 812.4 as subpart A, and by adding the subpart heading to read, “Subpart A—General,” and by adding a new subpart B, consisting of §§ 812.5 through 812.15, to read as follows:

Subpart B—Restrictions on Assistance to Noncitizens

Sec.

812.5 General.

812.5a Requirements concerning documents.

812.6 Submission of evidence of citizenship or eligible immigration status.

812.7 Documents of eligible immigration status.

812.8 Verification of eligible immigration status.

812.9 Delay, denial or termination of assistance.

812.10 Preservation of mixed families and other families.

812.11 Proration of assistance.

812.12 Prohibition of assistance to noncitizen students.

812.13 Compliance with nondiscrimination requirements.

812.14 Protection from liability for responsible entities, State, local, and tribal government agencies and officials.

812.15 Liability of ineligible families for reimbursement of benefits.

Subpart B—Restrictions on Assistance to Noncitizens

§ 812.5 General.

(a) *Restrictions on assistance.*

Assistance provided under a Section 214 covered program is restricted to:

(1) *Citizens;* or
(2) *Noncitizens* who have eligible immigration status in one of the following categories:

(i) A noncitizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C.

1101(a)(20) and 1101(a)(15), respectively (immigrants). (This category includes a noncitizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161), (special agricultural worker), who has been granted lawful temporary resident status);

(ii) A noncitizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(iii) A noncitizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (refugee status); pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) (asylum status); or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(iv) A noncitizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) (parole status);

(v) A noncitizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) (threat to life or freedom); or

(vi) A noncitizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) (amnesty granted under INA 245A).

(b) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section;

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of the three types of assistance provided in § 812.10. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in § 812.10.

§ 812.5a. Requirements concerning documents.

For any notice or document (decision, declaration, consent form, etc.) that §§ 812.5 through 812.15 require a responsible entity to provide to an individual, or require that the responsible entity obtain the signature of the individual, the responsible entity, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

§ 812.6 Submission of evidence of citizenship or eligible immigration status.

(a) *General.* Eligibility for assistance or continued assistance under a Section 214 covered program is contingent upon a family's submission to the responsible entity of the documents described in paragraph (b) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the family members may exercise the election not to contend to have eligible immigration status as provided in paragraph (e) of this section, and the provisions of § 812.10 shall apply.

(b) *Evidence of citizenship or eligible immigration status.* Each family member, regardless of age, must submit the following evidence to the responsible entity:

(1) For citizens, the evidence consists of a signed declaration of U.S. citizenship;

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on June 19, 1995, the evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) Proof of age document.

(3) For all other noncitizens, the evidence consists of:

(i) A signed declaration of eligible immigration status;

(ii) The INS documents listed in § 812.7; and

(iii) A signed verification consent form.

(c) *Declaration.* For each family member who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the responsible entity a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status.

(1) For each adult, the declaration must be signed by the adult.

(2) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(d) *Verification consent form*—(1) *Who signs.* Each noncitizen who declares eligible immigration status, must sign a verification consent form as follows:

(i) For each adult, the form must be signed by the adult.

(ii) For each child, the form must be signed by an adult member of the family residing in the assisted dwelling unit who is responsible for the child.

(2) *Notice of release of evidence by responsible entity.* The verification consent form shall provide that evidence of eligible immigration status may be released by the responsible entity, without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(i) HUD as required by HUD; and

(ii) The INS for purposes of verification of the immigration status of the individual.

(3) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(e) *Individuals who do not contend to have eligible immigration status.*—If one or more members of a family elect not to contend that they have eligible immigration status and the other members of the family establish their citizenship or eligible immigration status, the family may be considered for assistance under §§ 812.10 or 812.11 despite the fact that no declaration or documentation of eligible status is submitted by one or more members of the family. The family, however, must identify to the responsible entity, the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(f) *Notification of requirements of Section 214*—(1) *When notice is to be issued.* Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible immigration status as provided by paragraph (e) of this section, shall be

given by the responsible entity as follows:

(i) *Applicant's notice.* The notification described in paragraph (f)(1) of this section shall be given to each applicant at the time of application for financial assistance. Families whose applications are pending on June 19, 1995, shall be notified of the requirements to submit evidence of eligible status as soon as possible after June 19, 1995.

(ii) *Notice to families already receiving assistance.* For a family in occupancy on June 19, 1995, the notification described in paragraph (f)(1) of this section shall be given to each at the time of, and together with, the responsible entity's notice of the first regular reexamination after that date, but not later than one year following June 19, 1995.

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of the evidence of citizenship or eligible immigration status, as required by this section;

(ii) Describe the type of evidence that must be submitted and state the time period in which that evidence must be submitted (see paragraph (g) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see § 812.9 concerning INS appeal, and informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Families already receiving assistance also shall be informed of how to obtain assistance under the preservation of families provisions of § 812.10.

(g) *When evidence of eligible status is required to be submitted.*—The responsible entity shall require evidence of eligible status to be submitted at the times specified in paragraph (g) of this section, subject to any extension granted in accordance with paragraph (h) of this section.

(1) *Applicants.* For applicants, the responsible entity must ensure that evidence of eligible status is submitted not later than the date the responsible entity anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see § 812.8(a)).

(2) *Families already receiving assistance.* For a family already receiving the benefit of assistance in a covered program on June 19, 1995, the required evidence shall be submitted at the first regular reexamination after June

19, 1995, in accordance with program requirements. (See §§ 850.151, 880.603, 881.603, 882.212, 882.515, 883.704, 884.124, 886.124, 886.324, or 887.357 of this chapter.)

(3) *New occupants of assisted units.* For any new family members, the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this part unless the family already has submitted the evidence to the responsible entity for a covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any covered program.

(h) *Extensions of time to submit evidence of eligible status.*—(1) *When extension must be granted.* The responsible entity shall extend the time provided in paragraph (g) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under § 812.6(b) certifying that any person for whom required evidence has not been submitted is a noncitizen when eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) *Prohibition on indefinite extension period.* Any extension of time, if granted, shall be for a specific period of time. The additional time provided should be sufficient to allow the family the time to obtain the evidence needed. The responsible entity's determination of the length of the extension needed shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The responsible entity's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted. If the extension is denied, the notice shall explain the reasons for denial of the extension.

(i) *Failure to submit evidence or establish eligible immigration status.* If

the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (h) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the responsible entity shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance with the provisions of §§ 812.9 and 812.10 respectively. For all Section 8 programs, denial or termination of assistance shall be in accordance with the procedures of § 812.9.

§ 812.7 Documents of eligible immigration status.

(a) *General.* A responsible entity shall request and review original documents of eligible immigration status. The responsible entity shall retain photocopies of the documents for its own records and return the original documents to the family.

(b) *Acceptance evidence of eligible immigration status.* The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with § 812.8.

(1) Form I-551, Alien Registration Receipt Card (for permanent resident aliens);

(2) Form I-94, Arrival-Departure Record, with one of the following annotations:

(i) "Admitted as Refugee Pursuant to Section 207";

(ii) "Section 208" or "Asylum";

(iii) "Section 243(h)" or "Deportation stayed by Attorney General";

(iv) "Paroled Pursuant to Sec. 212(d)(5) of the INA";

(3) If Form I-94, Arrival-Departure Record, is not annotated, then accompanied by one of the following documents:

(i) A final court decision granting asylum (but only if no appeal is taken);

(ii) A letter from an INS asylum officer granting asylum (if application is filed on or after October 1, 1990) or from an INS district director granting asylum (if application filed before October 1, 1990);

(iii) A court decision granting withholding or deportation; or

(iv) A letter from an asylum officer granting withholding of deportation (if application filed on or after October 1, 1990).

(4) Form I-688, Temporary Resident Card, which must be annotated "Section 245A" or "Section 210";

(5) Form I-688B, Employment Authorization Card, which must be

annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12";

(6) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(c) *Other acceptable evidence.* If other documents are determined by the INS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the **Federal Register**.

§ 812.8 Verification of eligible immigration status.

(a) *When verification is to occur.* Verification of eligible immigration status shall be conducted by the responsible entity simultaneously with verification of other aspects of eligibility for assistance under a 214 covered program. (See § 812.6(g).) The responsible entity shall verify eligible immigration status in accordance with the INS procedures described in this section.

(b) *Primary verification*—(1) *Automated verification system.* Primary verification of the immigration status of the person is conducted by the responsible entity through the INS automated system (INS Systematic for Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(2) *Failure of primary verification to confirm eligible immigration status.* If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(c) *Secondary verification*—(1) *Manual search of INS records.* Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The responsible entity must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance under a covered Section 214 covered program.

(2) *Secondary verification initiated by responsible entity.* Secondary verification is initiated by the responsible entity forwarding photocopies of the original INS documents listed in § 812.7 (front and back), attached to the INS document verification request form G-845S (Document Verification Request), or

such other form specified by the INS, to a designated INS office for review. (Form G-845S is available from the local INS Office.)

(3) *Failure of secondary verification to confirm eligible immigration status.* If the secondary verification does not confirm eligible immigration status, the responsible entity shall issue to the family the notice described in § 812.9(d), which includes notification of appeal to the INS of the INS finding on immigration status (see § 812.9(d)(4)).

(d) *Exemption from liability for INS verification.* The responsible entity shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

§ 812.9 Delay, denial, or termination of assistance.

(a) *General.* Assistance to a family may not be delayed, denied, or terminated because of the immigration status of a family member except as provided in this section.

(b) *Restriction on delay, denial, or termination of assistance*—(1) *General.* Assistance to an applicant shall not be delayed or denied, and assistance to a tenant shall not be delayed, denied, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the tenant's dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the tenant's dwelling unit;

(iv) The INS appeals process under § 812.9(e) has not been concluded;

(v) For a tenant, the informal hearing process under § 812.9(f) has not been concluded;

(vi) Assistance is prorated in accordance with § 812.11;

(vii) Assistance for a mixed family is continued in accordance with § 812.10; or

(viii) Deferral of termination of assistance is granted in accordance with § 812.10.

(2) *When delay in assistance to an applicant is permissible.* Assistance to an applicant may be delayed after the conclusion of the INS appeal process, but not denied until the conclusion of the responsible entity informal hearing process, if an informal hearing is requested by the family.

(c) *Events causing denial or termination of assistance*—Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(1) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in § 812.6(g) or by the expiration of any extension granted in accordance with § 812.6(h); or

(2) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and second verification does not verify eligible immigration status of a family member; and

(i) The family does not pursue INS appeal or informal hearing rights as provided in this section; or

(ii) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

(d) *Notice of denial or termination of assistance*—The notice of denial or termination of assistance shall advise the family:

(1) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(2) That the family may be eligible for proration of assistance as provided under § 812.11;

(3) In the case of a tenant, the criteria and procedures for obtaining relief under the preservation of families provision in § 812.10;

(4) That the family has a right to request an appeal to the INS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal in accordance with the procedures of paragraph (e) of this section;

(5) That the family has a right to request an informal hearing with the responsible entity either upon completion of the INS appeal or in lieu of the INS appeal as provided in paragraph (f) of this section;

(6) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the responsible entity informal hearing process.

(e) *Appeal to the INS*—(1) *Submission of request for appeal.* Upon receipt of notification by the responsible entity that INS secondary verification failed to confirm eligible immigration status, the responsible entity shall notify the family

of the results of the INS verification, and the family shall have 30 days from the date of the responsible entity's notification to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the responsible entity with a copy of the written request for appeal and proof of mailing. For good cause shown, the responsible entity shall grant the family an extension of the time within which to request an appeal.

(2) *Documentation to be submitted as part of the appeal to INS.* The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS document verification request form G-845S (used to process the secondary verification request) or such other form specified by the INS, and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results. (Form G-845S is available from the local INS office.)

(3) *Decision by INS* (i) *When decision will be issued.* The INS will issue to the family, with a copy to the responsible entity, a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the family and the responsible entity of the reasons for the delay.

(ii) *Notification of INS decision and of informal hearing procedures.* When the responsible entity receives a copy of the INS decision, the responsible entity shall notify the family of its right to request an informal hearing on the responsible entity's ineligibility determination in accordance with the procedures of paragraph (f) of this section.

(4) *No delay, denial or termination of assistance until completion of INS appeal process; direct appeal to INS.* Pending the completion of the INS appeal under this section, assistance may not be delayed, denied or terminated on the basis of immigration status.

(f) *Informal hearing*—(1) *When request for hearing is to be made.* After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, the family may request that the responsible entity provide a hearing. This request must be made either within 14 days of the date the responsible entity mails or delivers the notice under paragraph (d) of this section, or within

14 days of the mailing of the INS appeal decision issued in accordance with paragraph (e) of this section (established by the date of postmark).

(2) *Extension of time to request hearing.* The responsible entity shall extend the period of time for requesting a hearing (for a specified period) upon good cause shown.

(3) *Informal hearing procedures.* (i) For tenants, the procedures for the hearing before the responsible entity are set forth in 24 CFR part 966.

(ii) For applicants, the procedures for the informal hearing before the responsible entity are as follows:

(A) *Hearing before an impartial individual.* The applicant shall be provided a hearing before any person(s) designated by the responsible entity (including an officer or employee of the responsible entity), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(B) *Examination of evidence.* The applicant shall be provided the opportunity to examine and copy, at the applicant's expense and at a reasonable time in advance of the hearing, any documents in the possession of the responsible entity pertaining to the applicant's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(C) *Presentation of evidence and arguments in support of eligible status.* The applicant shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(D) *Controverting evidence of the project owner.* The applicant shall be provided the opportunity to controvert evidence relied upon by the responsible entity and to confront and cross-examine all witnesses on whose testimony or information the responsible entity relies;

(E) *Representation.* The applicant shall be entitled to be represented by an attorney, or other designee, at the applicant's expense, and to have such person make statements on the applicant's behalf;

(F) *Interpretive services.* The applicant shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the applicant or responsible entity, as may be agreed upon by both parties;

(G) *Hearing to be recorded.* The applicant shall be entitled to have the

hearing recorded by audiotape (a transcript of the hearing may, but is not required, to be provided by the responsible entity); and

(H) *Hearing decision.* The responsible entity shall provide the family with a written final decision, based solely on the facts, presented at the hearing within 14 days of the date of the informal hearing. The decision shall state the basis for the decision.

(g) *Judicial relief.* A decision against a family member, issued in accordance with paragraph (e) or (f) of this section, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(h) *Retention of documents.* The responsible entity shall retain for a minimum of 5 years the following documents that may have been submitted to the responsible entity by the family, or provided to the responsible entity as part of the INS appeal or the informal hearing process:

- (1) The application for financial assistance;
- (2) The form completed by the family for income re-examination;
- (3) Photocopies of any original documents (front and back), including original INS documents;
- (4) The signed verification consent form;
- (5) The INS verification results;
- (6) The request for an INS appeal;
- (7) The final INS determination;
- (8) The request for an informal hearing; and
- (9) The final informal hearing decision.

(i) *Termination of assisted occupancy.* (1) In the Section 8 programs other than Section 8 Certificate, Housing Voucher, and Moderate Rehabilitation programs, assisted occupancy is terminated by:

(i) If permitted under the lease, the project owner notifying the family that because of the termination of assisted occupancy, the family is required to pay the HUD-approved market rent for the dwelling unit.

(ii) The project owner and family entering into a new lease with Section 8 assistance.

(iii) The project owner evicting the family. While the family continues in occupancy of the unit, the project owner may continue assistance payments in accordance with the Housing Assistance Payments contract if judicial action to terminate the tenancy and evict the family is promptly initiated and diligently pursued by the project owner in accordance with the terms of the lease. Action by the project owner to terminate the tenancy and to evict the family shall be in accordance with HUD

regulations and other HUD requirements. For any jurisdiction, HUD may prescribe a maximum period during which assistance payments may be continued during eviction proceedings and may prescribe other standards of reasonable diligence for the prosecution of eviction proceedings.

(2) In the Section 8 Certificate, Housing Voucher, and Moderate Rehabilitation programs, assisted occupancy is terminated by terminating assistance payments. (See provisions of this section concerning termination of assistance.) The HA shall not make any additional assistance payments to the project owner after the required procedures specified in this section have been completed. In addition, the HA shall not approve a lease, enter into an assistance contract, or process a portability move for the family after those procedures have been completed.

§ 812.10 Preservation of mixed families and other families.

(a) *Assistance available for mixed families*—(1) *Assistance available for tenant mixed families.* For a mixed family assisted under a Section 214 covered program on June 19, 1995, and following completion of the appeals and informal hearing procedures provided in § 812.9 if utilized by the family, one of the following three types of assistance may be available to the family:

- (i) Continued assistance (see paragraph (c) of this section);
- (ii) Temporary deferral of termination of assistance (see paragraph (d) of this section); or
- (iii) Prorated assistance (see § 812.11; a mixed family must be provided prorated assistance if the family so requests).

(2) *Assistance available for applicant mixed families.* Prorated assistance is also available for mixed families applying for assistance as provided in § 812.11.

(3) *Assistance available to other families in occupancy.* For families receiving assistance under a Section 214 covered program on June 19, 1995 and who have no members with eligible immigration status, the responsible entity may grant the family temporary deferral of termination of assistance.

(b) *Discretion afforded to provide certain family preservation assistance*—

(1) *Project owners.* With respect to assistance administered by a project owner, HUD has the discretion to determine under what circumstances families are to be provided one of the two statutory forms of assistance for preservation of the family (continued assistance or temporary deferral of termination of assistance). HUD is

exercising its discretion by specifying the standards in this section under which a project owner must provide one of these two types of assistance described in paragraph (a) of this section to a family. However, project owners and housing authorities must offer prorated assistance to eligible mixed families.

(2) *HAs.* With respect to an HA acting as a contract administrator of a certificate (including project-based certificate), housing voucher, or Moderate Rehabilitation program (as opposed to an HA owner), the HA, rather than HUD, has the discretion to determine the circumstances under which a family will be offered one of the two statutory forms of assistance (continued assistance or temporary deferral of termination of assistance). The HA must establish its own policy and criteria to follow in making its decision. In establishing the criteria for granting continued assistance or temporary deferral of termination of assistance, the HA must incorporate the statutory criteria, which are set forth in paragraphs (c) and (d) of this section. However, the housing authority must offer prorated assistance to eligible mixed families.

(c) *Continued assistance.* A mixed family may receive continued housing assistance if all of the following conditions are met:

(1) The family was receiving assistance under a Section 214 covered program on June 19, 1995;

(2) The family's head of household or spouse has eligible immigration status as described in § 812.5; and

(3) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(d) *Temporary deferral of termination of assistance*—(1) *Eligibility for this type of assistance.* If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level

that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(2) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of three years.

(3) *Notification requirements for beginning of each deferral period.* At the beginning of each deferral period, the responsible entity must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(4) *Determination of availability of affordable housing at end of each deferral period.* Before the end of each deferral period, the responsible entity must:

(i) Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the consolidated plan (if applicable, as described in 24 CFR part 91), the responsible entity's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing; and

(ii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceed three years), and a determination was made that other affordable housing is not available; or

(iii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed three years, or a determination has been made that other affordable housing is available.

(e) *Option to select proration of assistance at end of deferral period.* A family who is eligible for and who receives temporary deferral of termination of assistance, may request, and the project owner or housing

authority shall provide proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.

(f) *Notification of decision on family preservation assistance.* A responsible entity shall notify the family of its decision concerning the family's qualification for assistance under this section. If the family is ineligible for assistance under this section, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the family of any applicable appeal rights. (For HAs administering Certificate or Housing Voucher Programs, see §§ 882.216 or 887.405 of this chapter).

§ 812.11 Proration of assistance.

(a) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance under § 812.10(c), or other than a family for which termination of assistance is temporarily deferred under § 812.10(d).

(b) *Method or prorating assistance—*
(1) *Section 8 assistance other than Section 8 voucher assistance.* For Section 8 assistance other than assistance provided under the Section 8 Voucher Program, the HA shall prorate the family's assistance as follows:

(i) *Step 1.* Determine gross rent for the unit. (Gross rent is contract rent plus any allowance for tenant paid utilities).

(ii) *Step 2.* Determine total tenant payment in accordance with 24 CFR 813.107(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status).

(iii) *Step 3.* Subtract amount determined in Step 2 from amount determined in Step 1.

(iv) *Step 4.* Multiply the amount determined in Step 3 by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status; and

(B) The denominator is the total number of family members.

(v) *Prorated housing assistance.* The amount determined in Step 4 is the prorated housing assistance payment for a mixed family.

(vi) *No effect on contract rent.* Proration of the housing assistance payment does not affect contract rent to the owner. The family must pay as rent the portion of contract rent not covered by the prorated housing assistance payment.

(2) *Section 8 Voucher assistance.* For assistance under the Section 8 Voucher

Program, the HA shall prorate the family's assistance as follows:

(i) *Step 1.* Determine the amount of the pre-proration voucher housing assistance payment in accordance with 24 CFR 887.353. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(ii) *Step 2.* Multiply the amount determined in step 1 by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status; and

(B) The denominator is the total number of family members.

(iii) *Prorated housing assistance.* The amount determined in Step 2 is the prorated housing assistance payment for a mixed family.

(iv) *No effect on rent to owner.* Proration of the voucher housing assistance payment does not affect rent to the owner. The family must pay as rent the portion of rent not covered by the prorated housing assistance payment.

§ 812.12 Prohibition of assistance to noncitizen students.

(a) *General.* The provisions of §§ 812.10 and 812.11, permitting continued assistance, prorated assistance or temporary deferral of termination of assistance for certain families, do not apply to any person who is determined to be a noncitizen student, as defined in paragraph (b) of this section, or the family of the noncitizen student, as described in paragraph (c) of this section.

(b) *Noncitizen student.* For purposes of this part, a noncitizen student is defined as a noncitizen who:

(1) Has a residence in a foreign country that the person has no intention of abandoning;

(2) Is a bona fide student qualified to pursue a full course of study; and

(3) Is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such person and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn).

(c) *Family of noncitizen student.* The prohibition on providing assistance to a

noncitizen student as described in paragraph (a) of this section also extends to the noncitizen spouse of the noncitizen student and minor children of any noncitizen student if the spouse or children are accompanying the student or following to join such student. The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

§ 812.13 Compliance with nondiscrimination requirements.

The responsible entity shall administer the restrictions on use of assisted housing by noncitizens with ineligible immigration status imposed by this part in conformity with the nondiscrimination requirements of, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–5) and the implementing regulations in 24 CFR part 1, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations in 24 CFR part 8, the Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations in 24 CFR part 100, and other civil rights statutes cited in the applicable program regulations. These statutes prohibit, among other things, discriminatory practices on the basis of race, color, national origin, sex, religion, age, disability and familial status in the provision of housing.

§ 812.14 Protection from liability for responsible entities, State, local, and tribal government agencies and officials.

(a) *Protection from liability for responsible entities.* HUD will not take any compliance, disallowance, penalty, or other regulatory action against a responsible entity with respect to any error in its determination of eligibility for financial assistance based on citizenship or immigration status:

(1) If the responsible entity established eligibility based upon verification of eligible immigration status through the verification system described in § 812.8;

(2) Because the responsible entity was required to provide an opportunity for the family to submit evidence in accordance with § 812.6;

(3) Because the responsible entity was required to wait for completion of INS verification of immigration status in accordance with § 812.8;

(4) Because the responsible entity was required to wait for completion of the INS appeal process provided in accordance with § 812.9(e); or

(5) Because the responsible entity was required to provide an informal hearing in accordance with § 812.9(f).

(b) *Protection from liability for State, local and tribal government agencies and officials.* State, local and tribal government agencies and officials shall not be liable for the design or implementation of the verification system described in § 812.8, and the informal hearings provided under § 812.9(f), as long as the implementation by the State, local or tribal government agency or official is in accordance with prescribed HUD rules and requirements.

§ 812.15 Liability of ineligible families for reimbursement of benefits.

Where a family has received the benefit of HUD financial assistance to which it was not entitled because the family intentionally misrepresented eligible status, the ineligible family is responsible for reimbursing HUD for the assistance improperly paid. If the amount of the assistance is substantial, the responsible entity is encouraged to refer the case to the HUD Regional Inspector General's office for further investigation. Possible criminal prosecution may follow based on the False Statements Act (18 U.S.C. 1001 and 1010).

PART 850—HOUSING DEVELOPMENT GRANTS

28. The authority citation for part 850 continues to read as follows:

Authority: 42 U.S.C. 1437o and 3535(d).

29. Section 850.151 is amended by adding one sentence at the beginning of paragraph (c), by adding two sentences at the end of paragraph (f)(1), and by adding a new paragraph (f)(3), to read as follows:

§ 850.151 Project restrictions.

(c) *Tenant selection.* The owner shall determine the eligibility of applicants for lower income units in accordance with the requirements of 24 CFR parts 812 and 813, including the provisions of these parts concerning citizenship or eligible immigration status and income limits, and certain assistance to mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status.).

(f) * * *

(1) * * * At the first regular reexamination after June 19, 1995 the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all

family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.

* * * * *

(3) For provisions related to termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions related to certain assistance to mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions related to deferral of termination of assistance.

* * * * *

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

30. The authority citation for part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

31. In § 880.504, a new paragraph (e) is added, to read as follows:

§ 880.504 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with 24 CFR 812.9 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall simply with the provisions of 24 CFR 812.10 concerning assistance to mixed families, and deferral of termination of assistance.

32. In § 880.601, paragraph (b) is revised to read as follows:

§ 880.601 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions, including determining eligibility of applicants in accordance with 24 CFR parts 812 and 813, provision of Federal selection preferences in accordance with § 880.613, selection of tenants, obtaining and verifying Social Security Numbers

submitted by families (as provided by 24 CFR part 750), obtaining signed consent forms from families for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760), reexamination of family income, evictions and other terminations of tenancy, and collection of rents, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions shall be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

33. Section 880.603 is amended by revising the introductory text in paragraph (b), by adding a sentence at the end of paragraph (b)(2), by adding a sentence at the end of paragraph (c)(1), and by adding one sentence at the end of paragraph (c)(2) and paragraph (c)(3), to read as follows:

§ 880.603 Selection and admission of assisted tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for obtaining and verifying information related to income in accordance with 24 CFR part 813, and evidence related to citizenship and eligible immigration status in accordance with 24 CFR part 812, to determine whether the applicant is eligible for assistance in accordance with the requirements of 24 CFR parts 812 and 813, and to select families for admission to the program, which includes giving selection preferences in accordance with §§ 880.613 through 880.617.

* * * * *

(2) * * * For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions related to certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

* * * * *

(c) * * *

(1) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part

812 and verify the immigration status of any new family member.

(2) * * * At any interim reexamination after June 19, 1995 when a new family member has been added, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of the citizenship or eligible immigration status of any new family member.

(3) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

* * * * *

34. Section 880.607 is amended by redesignating the first sentence following the paragraph heading in the introductory text of paragraph (b)(3) as paragraph (b)(3)(i); by redesignating the existing paragraphs (b)(3)(i) and (b)(3)(ii) as (b)(3)(i)(A) and (b)(3)(i)(B), respectively; by redesignating and revising the undesignated paragraph in (b)(3) as (b)(3)(ii) and by adding a new paragraph (c)(4) to read as follows:

§ 880.607 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(3) * * *

(ii) Failure of the family to timely submit all required information on family income and composition, including failure to submit required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 812), failure to disclose and verify Social Security Numbers (as provided by 24 CFR part 750), failure to sign and submit consent forms (as provided by 24 CFR part 760), or knowingly providing incomplete or inaccurate information, shall constitute a substantial violation of the lease.

(c) * * *

(4) For provisions related to termination of assistance because of failure to establish citizenship or eligible immigration status, including informal hearing procedures, see 24 CFR part 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for

provisions concerning deferral of termination of assistance.

* * * * *

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

35. The authority citation for part 881 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

36. In § 881.504, a new paragraph (e) is added to read as follows:

§ 881.504 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate financial assistance in accordance with 24 CFR 812.9 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall comply with the provisions of 24 CFR 812.10 concerning certain assistance to mixed families, and deferral of termination of assistance.

37. In § 881.601, paragraph (b) is revised to read as follows:

§ 881.601 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.*

The owner is responsible for all management functions (including determining eligibility of applicants in accordance with 24 CFR parts 812 and 813, provision of Federal selection preferences in accordance with 24 CFR 880.613, selection of tenants, obtaining and verifying Social Security Numbers submitted by families (as provided by 24 CFR part 750), obtaining signed consent forms from families for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760), reexamination of family income, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions shall be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

38. Section 881.603 is amended by revising the introductory text of

paragraph (b), by adding one sentence at the end of paragraph (b)(3), by adding two sentences at the end of paragraph (c)(1), and by adding one sentence at the end of paragraphs (c)(2) and (c)(3), to read as follows:

§ 881.603 Selection and admission of assisted tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for obtaining and verifying information related to income in accordance with 24 CFR part 813, and evidence related to citizenship and eligible immigration status in accordance with 24 CFR part 812 to determine whether the applicant is eligible for assistance in accordance with the requirements of 24 CFR parts 812 and 813 and parts 750 and 760 of chapter VII, and to select families for admission to the program, which includes giving selection preferences in accordance with §§ 881.613 through 881.617.

* * * * *

(3) * * * For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR part 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

* * * * *

(c) * * *

(1) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.

(2) * * * At any interim reexamination after June 19, 1995 when a new family member has been added, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(3) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members

include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

* * * * *

39. In § 881.607, the second sentence of paragraph (b)(3)(ii) is revised, and a new paragraph (c)(4) is added, to read as follows:

§ 881.607 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(3) * * *

(ii) * * * Failure of the family to timely submit all required information on family income and composition, including failure to submit required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 812), failure to disclose and verify Social Security Numbers (as provided by 24 CFR part 750), failure to sign and submit consent forms (as provided by 24 CFR part 760), or knowingly provided incomplete or inaccurate information, shall constitute a substantial violation of the lease.

* * *

(c) * * *

(4) For provisions related to termination of assistance because of failure to establish citizenship or eligible immigration status, including the informal hearing procedures, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

* * * * *

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

40. The authority citation for part 882 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d) and 11401.

41. In § 882.116, paragraph (c) is revised to read as follows:

§ 882.116 Responsibilities of the PHA.

* * * * *

(c) Receipt and review of applications for participation; selection of applicants; verification of family income and other factors relating to eligibility (including citizenship or eligible immigration status as provided by 24 CFR part 812)

and amount of assistance; and maintenance of a waiting list.

* * * * *

42. In § 882.118, paragraph (a)(1) is revised to read as follows:

§ 882.118 Obligations of the Family.

(a) * * *

(1) Supply such certification, release, information or documentation as the PHA or HUD determine to be necessary, including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 812), submission of Social Security Numbers and verifying documentation (as provided by 24 CFR part 750), submission of signed consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760), and submissions required for an annual or interim reexamination of family income and composition.

* * * * *

43. In § 882.209, paragraph (a)(2) is revised to read as follows:

§ 882.209 Selection and participation.

(a) * * *

(2)(i) The PHA shall determine whether an applicant for participation:

(A) Qualifies as a family;

(B) Is income eligible; and

(C) Is a citizen or is in eligible immigration status as determined in accordance with 24 CFR part 812.

(ii) The family shall submit any certification, release, information, or documentation as the PHA or HUD determines to be necessary (see the requirements in 24 CFR parts 750, 760, 812, and 813).

* * * * *

44. In § 882.210, a new paragraph (f) is added to read as follows:

§ 882.210 Grounds for denial or termination of assistance.

* * * * *

(f) The family's obligations as stated in § 882.118 include submission of required evidence of citizenship or eligible immigration status. For a statement of circumstances in which the PHA shall deny or terminate housing assistance payments because a family member is not a U.S. citizen or does not establish eligible immigration status, and the applicable informal hearing procedures, see § 882.216(b) and 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial or termination of assistance, and

for provisions concerning deferral of termination of assistance.

45. Section 882.212 is amended by adding two sentences at the end of paragraph (a), and by adding one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 882.212 Reexamination of Family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship of eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member (except a child born in the United States).

(b) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of housing assistance payments when the PHA determines that a member is not a U.S. citizen or does not have eligible immigration status, see § 882.216 and 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

* * * * *

46. Section 882.216 is amended by adding a new paragraph (a)(5) and new paragraphs (b)(1)(v) and (b)(8), to read as follows:

§ 882.216 Informal review or hearing.

(a) * * *

(5) The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR 812.9.

(b) * * *

(1) * * *

(v) A determination that the participant does not qualify under the PHA's policy for granting special relief under 24 CFR 812.10.

* * * * *

(8) The informal hearing provisions for the termination of assistance on the

basis of ineligible immigration status are contained in 24 CFR 812.9.

* * * * *

47. In § 882.514, paragraph (f) is amended by adding one sentence at the end of the paragraph, to read as follows:

§ 882.514 Family participation.

* * * * *

(f) * * * The informal hearing requirements for denial and termination of assistance on the basis of ineligible immigration status are contained in 24 CFR 812.9.

* * * * *

48. Section 882.515 is amended by adding two sentences at the end of paragraph (a), and by adding one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 882.515 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 812 concerning verification of immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of assistance when the PHA determines that a family member is not a U.S. citizen or does not have eligible immigration status, see § 882.216 and 24 CFR 812.9 and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

48a. Section 882.808 is amended by adding two sentences at the end of paragraph (i)(1), one sentence at the end of paragraphs (i)(2), and a sentence at the end of paragraph (l), to read as follows:

§ 882.808 Management.

* * * * *

(i) * * *

(1) * * * At the first regular reexamination after June 19, 1995, the PHA shall follow the requirements of 24

CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 812 concerning verification of immigration status of any new family member.

(2) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

* * * * *

(1) * * * For provisions requiring termination of assistance when the PHA determines that a family member is not a U.S. citizen or does not have eligible immigration status, see § 882.216 and 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, or for provisions concerning deferral of termination of assistance.

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

49. The authority citation for part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

50. In § 883.101, the last sentence of paragraph (c) is revised to read as follows:

§ 883.101 General.

* * * * *

(c) * * * Eligible families are families, as defined in 24 CFR part 812, whose incomes qualify them for assistance in accordance with 24 CFR part 813, and who are otherwise eligible under these parts.

* * * * *

51. In § 883.605, a new paragraph (e) is added, to read as follows:

§ 883.605 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate financial assistance in accordance with 24 CFR 812.9 because the owner determines that the entire

family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall comply with the provisions of 24 CFR 812.10 concerning assistance to mixed families, and deferral of termination of assistance.

52. In § 883.702, the section heading and paragraph (b) are revised to read as follows:

§ 883.702 Responsibilities of the owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including determination of the eligibility of applicants in accordance with 24 CFR parts 812 and 813, provision of Federal selection preferences in accordance with § 883.714, selection of tenants, obtaining and verifying Social Security Numbers submitted by families (as provided by 24 CFR part 750), obtaining signed consent forms from families for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760), reexamination of family income, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions shall be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

53. Section 883.704 is amended by adding one sentence at the end of paragraph (b)(3), two sentences at the end of paragraph (c)(1), and one sentence at the end of paragraphs (c)(2), and (c)(3), to read as follows:

§ 883.704 Selection and admission of tenants.

* * * * *

(b) * * *

(3) * * * For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also see 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

* * * * *

(c) * * *

(1) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning the verification of the immigration status of any new family member.

(2) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(3) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

* * * * *

54. In § 883.708, the second sentence of paragraph (b)(3)(ii) beginning with "Failure of * * *" is revised, and a new paragraph (c)(4) is added, to read as follows:

§ 883.708 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(3) * * *

(ii) * * * Failure of the family to timely submit all required information on family income and composition, including failure to submit required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 812), failure to disclose and verify Social Security Numbers (as provided by 24 CFR part 750), failure to sign and submit consent forms (as provided by 24 CFR part 760), or knowingly provide incomplete or inaccurate information, shall constitute a substantial violation of the lease.

* * *

* * * * *

(c) * * *

(4) For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, including the applicable informal hearing requirements, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions

concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

* * * * *

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

55. The authority citation for part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

56. In § 884.118, paragraph (a)(3) is revised to read as follows:

§ 884.118 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; determining eligibility of applicants in accordance with 24 CFR parts 812 and 813; selection of families, including verification of income, provision of Federal selection preference in accordance with § 884.226, obtaining and verifying Social Security Numbers submitted by applicants (as provided by 24 CFR part 750), obtaining signed consent forms from applicants for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided in 24 CFR part 760), and other pertinent requirements; and determination of the amount of tenant rent in accordance with HUD established schedules and criteria.

* * * * *

57. In § 884.214, paragraph (b)(1) is revised and a new paragraph (b)(8) is added, to read as follows:

§ 884.214 Marketing.

* * * * *

(b) *Eligibility, selection and admission of families.* (1) The owner is responsible for determination of eligibility of applicants in accordance with the procedure of 24 CFR part 812, selection of families from among those determined to be eligible (including provision of Federal selection preferences in accordance with § 884.226), and computation of the amount of housing assistance payments on behalf of each selected family, in accordance with schedules and criteria established by HUD.

* * * * *

(8) For the informal hearing provisions related to denial of assistance

based upon failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

58. In § 884.216, a new sentence is added at the end of the paragraph to read as follows:

§ 884.216 Termination of tenancy.

* * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, including the applicable informal requirements, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

59. Section 884.218 is amended by adding two sentences at the end of paragraph (a), and one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 884.218 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

60. In § 884.223, a new paragraph (e) is added to read as follows:

§ 884.223 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to establish citizenship or eligible immigration status.* If an owner subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with § 812.9 of this chapter because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall comply with the provisions of 24 CFR 812.10 concerning assistance to mixed families, and deferral of termination of assistance.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

61. The authority citation for part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

62. In § 886.119, the section heading and paragraph (a)(3) are revised to read as follows:

§ 886.119 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; determining eligibility of applicants in accordance with 24 CFR parts 812 and 813; selection of families, including verification of income, provision of Federal selection preferences in accordance with § 886.132, obtaining and verifying Social Security Numbers submitted by applicants (as provided by 24 CFR part 750), obtaining signed consent forms from applicants for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided in 24 CFR part 760), and other pertinent requirements; and determination of the amount of tenant rent in accordance with HUD established schedules and criteria.

* * * * *

63. In § 886.121, paragraph (b) is revised and a new paragraph (c) is added, to read as follows:

§ 886.121 Marketing.

* * * * *

(b) The Owner shall comply with the applicable provisions of the Contract,

this subpart A, and the procedures of 24 CFR part 812 in taking applications, selecting families, and all related determinations.

(c) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

64. Section 886.124 is amended by adding two sentences at the end of paragraph (a), and one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 886.124 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995, when there is a new family member, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9 and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

65. Section 886.128 is revised to read as follows:

§ 886.128 Termination of tenancy.

Part 247 of this title applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of 24 parts 247 and 812 shall apply. The provisions of 24 CFR 812.10 concerning certain

assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and concerning deferral of termination of assistance also shall apply.

66. In § 886.129, a new paragraph (e) is added, to read as follows:

§ 886.129 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to establish citizenship or eligible immigration status.* If an owner subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with 24 CFR 812.9 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall comply with the provisions of 24 CFR 812.10 concerning assistance to mixed families, and deferral of termination of assistance.

67. In § 886.318, paragraph (a)(3) is revised to read as follows:

§ 886.318 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; determining eligibility of applicants in accordance with 24 CFR parts 812 and 813; selection of families, including verification of income, provision of Federal selection preferences in accordance with § 886.337, obtaining and verifying Social Security Numbers submitted by applicants (as provided by 24 CFR part 750), obtaining signed consent forms from applicants for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided in 24 CFR part 760), and other pertinent requirements; and determination of the amount of tenant rent in accordance with HUD established schedules and criteria.

* * * * *

68. In § 886.321, the first two sentences of paragraph (b)(1) are revised and a new paragraph (b)(7) is added, to read as follows:

§ 886.321 Marketing.

* * * * *

(b)(1) HUD will determine the eligibility for assistance of families in occupancy before sales closing. After the sale, the owner shall be responsible for determining the eligibility of

applicants for tenancy (including compliance with the procedures of 24 CFR part 812 on evidence of citizenship or eligible immigration status), selection of families from among those determined to be eligible (including provision of Federal preferences in accordance with § 886.337), and computation of the amount of housing assistance payments on behalf of each selected family, in accordance with the Gross Rent and the Total Tenant Payment computed in accordance with 24 CFR part 813. * * *

(7) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance. * * *

69. Section 886.324 is amended by adding two sentences at the end of paragraph (a), and one sentence at the end of paragraph (b) and (c), to read as follows:

§ 886.324 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of part 812 concerning verification of the immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

70. Section 886.328 is revised to read as follows:

§ 886.328 Termination of tenancy.

Part 247 of this title applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of 24 CFR parts 247 and 812 shall apply. The provisions of 24 CFR 812.10 concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and concerning deferral of termination of assistance also shall apply.

71. In § 886.329, a new paragraph (e) is added to read as follows:

§ 886.329 Leasing to eligible families.

(e) *Termination of assistance for failure to establish citizenship or eligible immigration status.* If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with 24 CFR 812.9 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall comply with the provisions of 24 CFR 812.10 concerning assistance to mixed families, and deferral of termination of assistance.

PART 887—HOUSING VOUCHERS

72. The authority citation for part 887 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

73. In § 887.105, paragraph (b)(5) is revised to read as follows:

§ 887.105 PHA responsibilities.

(b) * * *

(5) Determine the amount of, and make, the housing assistance payment (see § 887.353); obtain and verify evidence related to citizenship and eligible immigration status in accordance with 24 CFR part 812; reexamine the family income and family size and composition, at least annually, and redetermine the amount of the housing assistance payment (see §§ 887.355 through 887.359); adjust the amount of the housing assistance

payment as a result of an adjustment by the PHA of any applicable payment standard or utility allowance (see §§ 887.353 and 887.361); and

* * *

74. In § 887.355, paragraph (b) is redesignated as paragraph (c), and a new paragraph (b) is added, to read as follows:

§ 887.355 Regular reexamination of family income and composition.

* * *

(b) At the first regular reexamination after June 19, 1995, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.

* * *

75. Section 887.357 is amended by adding a new sentence at the end, to read as follows:

§ 887.357 Interim reexamination of family income and composition.

* * * At any interim reexamination after June 19, 1995 that involves the addition of a new family member, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

76. In § 887.401, paragraph (a), introductory text, and paragraph (a)(1) are revised, to read as follows:

§ 887.401 Family responsibilities.

(a) A family shall:

(1) Supply any certification, release, information, or documentation that the PHA or HUD determines to be necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 812), disclosure and verification of Social Security Numbers (as provided by 24 CFR part 750), signing and submission of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760), and other information required for use by the PHA in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements;

* * *

77. In § 887.403, paragraphs (d) and (e) are redesignated as paragraphs (e)

and (f), and a new paragraph (d) is added, to read as follows:

§ 887.403 Grounds for PHA denial or termination of assistance.

(d) The family's obligations as stated in § 887.401 include submission of required evidence of citizenship or eligible immigration status. For a statement of circumstances in which the PHA shall deny or terminate assistance because of a family member's inability to establish citizenship or eligible immigration status, and the applicable informal hearing procedures, see 24 CFR 882.216 and 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial or termination of assistance, and for provisions concerning deferral of termination of assistance.

78. Section 887.405 is amended by adding a new paragraph (a)(4) and new paragraphs (b)(1)(iv) and (b)(8), to read as follows:

§ 887.405 Informal review or hearing.

(4) The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR 812.9.

(iv) A determination that the participant does not qualify under the PHA's policy for granting special assistance under 24 CFR 812.10.

(8) The informal hearing provisions for the termination of assistance on the basis of ineligible immigration status are contained in 24 CFR 812.9.

PART 900—SECTION 23 HOUSING ASSISTANCE PAYMENTS PROGRAM—NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION

79. The authority citation for part 900 continues to read as follows:

Authority: 42 U.S.C. 1410(b) and 3535(d).

80. In § 900.102, the first sentence of paragraph (g) is revised to read as follows:

§ 900.102 Definitions.

(g) *Eligible families.* Those families determined by the LHA to meet the requirements for admission into housing assisted under this part in accordance

with 24 CFR parts 912 and 913 and other pertinent requirements. * * *

81. Section 900.202 is amended by adding a new sentence to the end of paragraph (d)(3), and by redesignating existing paragraphs (g) and (h) as paragraphs (h) and (i) respectively, and by adding a new paragraph (g), to read as follows:

§ 900.202 Project operation.

(3) * * * For provisions related to denial of assistance because of a failure to establish citizenship or eligible immigration status, the requirements of 24 CFR 960.207 and 24 CFR part 912 shall apply.

(g) *Termination of assistance.* For provisions related to termination of assistance for failure to establish citizenship or eligible immigration status, the requirements of 24 CFR parts 912 and 966 shall apply.

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

82. The authority citation for part 904 is revised to read as follows:

Authority: 42 U.S.C. 1437–1437ee and 3535(d).

83. In § 904.104, the first sentence of paragraph (b)(1) and paragraph (g)(2) are revised, to read as follows:

§ 904.104 Eligibility and selection of homebuyers.

(b) *Eligibility and standards for admission.* (1) Homebuyers shall be lower income families that are determined to be eligible for admission in accordance with the provisions of 24 CFR parts 912 and 913, which prescribe income definitions, income limits, and restrictions concerning citizenship or eligible immigration status. * * *

(2) Applicants who are not selected for a specific Turnkey III development shall be notified in accordance with HUD-approved procedure. The notice shall state:

(i) The reason for the applicant's rejection (including a nonrecommendation by the recommending committee unless the applicant has previously been so notified by the committee);

(ii) That the applicant will be given an information hearing on such determination, regardless of the reason

for the rejection, if the applicant makes a request for such a hearing within a reasonable time (to be specified in the notice) from the date of the notice; and

(iii) For denial of assistance for failure to establish citizenship or eligible immigration status, the applicant may request, in addition to the informal hearing, an appeal to the INS, in accordance with 24 CFR 912.9.

84. In § 904.107, paragraphs (j)(2) and (m)(1) are revised to read as follows:

§ 904.107 Responsibilities of homebuyer.

(2) For purposes of determining eligibility of an applicant (see 24 CFR parts 912 and 913, as well as this part) and the amount of Homebuyer payments under paragraph (j)(1) of this section, the LHA shall examine the family's income and composition and follow the procedures required by 24 CFR part 912 for determining citizenship or eligible immigration status before initial occupancy. Thereafter, for the purposes stated above and to determine whether a Homebuyer is required to purchase the home under § 904.104(h)(1), the LHA shall reexamine the Homebuyer's income and composition regularly, at least once every 12 months, and shall undertake such further determination and verification of citizenship or eligible immigration status as required by 24 CFR part 912. The Homebuyer shall comply with the LHA's policy regarding required interim reporting of changes in the family's income and composition. If the LHA receives information from the family or other source concerning a change in the family income or other circumstances between regularly scheduled reexaminations, the LHA, upon consultation with the family and verification of the information (in accordance with 24 CFR parts 912 and 913 of this chapter) shall promptly make any adjustments determined to be appropriate in the Homebuyer payment amount or take appropriate action concerning the addition of a family member who is not a citizen with eligible immigration status. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment and Tenant Rent must be verified.

(m) *Termination by LHA.* (1) In the event the homebuyer breaches the Homebuyers Ownership Opportunity Agreement by failure to make the required monthly payment within ten days after its due date, by

misrepresenting or withholding of information in applying for admission or in connection with any subsequent reexamination of income and family composition (including the failure to submit any required evidence of citizenship or eligible immigration status, as provided by 24 CFR part 912; the failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750; or the failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760), or by failure to comply with any of the other homebuyer obligations under the Agreement, the LHA may terminate the Agreement. No termination under this paragraph may occur less than 30 days after the LHA gives the homebuyer notice of its intention to do so, in accordance with paragraph (m)(3) of this section. For termination of assistance for failure to establish citizenship or eligible immigration status under 24 CFR part 912, the requirements of 24 CFR parts 912 and 966 shall apply.

* * * * *

PART 905—INDIAN HOUSING PROGRAMS

85. The authority citation for part 905 continues to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437a, 1437aa, 1437bb, 1437cc, 1437ee, and 3535(d).

86. Section 905.102 is amended by adding definitions in alphabetical order for the terms "Child," "Citizen," "Evidence of citizenship or eligible immigration status," "Head of household," "INS," "Mixed family," "National," "Noncitizen," "Section 214," and "Section 214 covered program" to read as follows:

§ 905.102 Definitions.

* * * * *

Child. A member of the family, other than the family head or a spouse, who is under 18 years of age.

* * * * *

Citizen. A citizen or national of the United States.

* * * * *

Evidence of citizenship or eligible immigration status. The documents which must be submitted to evidence citizenship or eligible immigration status (see § 905.310(e)).

* * * * *

Head of household. The adult member of the family who is the head

of the household for purposes of determining income eligibility and rent.

* * * * *

INS. The U.S. Immigration and Naturalization Service.

* * * * *

Mixed family. A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

* * * * *

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

* * * * *

Noncitizen. A person who is neither a citizen nor national of the United States.

* * * * *

Section 214. Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the categories of eligible immigration status specified in Section 214.

Section 214 covered programs. Programs to which the restrictions imposed by Section 214 apply are programs that make available financial assistance pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437–1440), Section 235 or Section 236 of the National Housing Act (12 U.S.C. 1715z and 1715z–1) and Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

* * * * *

87. Section 905.310 is added to read as follows:

§ 905.310 Restrictions on assistance to noncitizens.

(a) **Requirements concerning documents.** For any notice or document (decision, declaration, consent form, etc.) that this section requires an IHA to provide to an individual, or requires that the IHA obtain the signature of the individual, the IHA, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

(b) **Restrictions on assistance.** Assistance provided under a Section 214 covered program is restricted to:

(1) *Citizens*; or

(2) *Noncitizens* who have eligible immigration status in one of the following categories:

(i) A noncitizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively) (immigrants). (This category includes a noncitizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161), (special agricultural worker), who has been granted lawful temporary resident status);

(ii) A noncitizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(iii) A noncitizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (refugee status); pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) (asylum status); or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(iv) A noncitizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) (parole status);

(v) A noncitizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) (threat to life or freedom); or

(vi) A noncitizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) (amnesty granted under INA 245A).

(c) **Family eligibility for assistance.** (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (b) of this section;

(2) Despite the ineligibility of one or more family members, a mixed family

may be eligible for one of the three types of assistance provided in paragraph (r) of this section. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in paragraph (r) of this section.

(d) *Exemption of certain homebuyers from restrictions of this section.* A homebuyer who executed a Homeownership Opportunity Agreement under the Turnkey III program or who executed a Mutual Help and Occupancy Agreement under the Mutual Help Homeownership program before June 19, 1995 is *not* subject to this citizenship or eligible immigration status requirement for continued participation in the program.

(e) *Submission of evidence of citizenship or eligible immigration status.*

(1) *General.* Eligibility for assistance or continued assistance under a Section 214 covered program is contingent upon a family's submission to the IHA of the documents described in paragraph (e)(2) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the members may exercise the election not to contend to have eligible immigration status as provided in paragraph (f) of this section, and the provisions of paragraph (r) of this section shall apply.

(2) *Evidence of citizenship or eligible immigration status.* Each family, regardless of age, must submit the following evidence to the IHA:

(i) For citizens, the evidence consists of a signed declaration of U.S. citizenship;

(ii) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on June 19, 1995, the evidence consists of:

(A) A signed declaration of eligible immigration status; and

(B) Proof of age document.

(iii) For all other noncitizens, the evidence consists of:

(A) A signed declaration of eligible immigration status;

(B) The INS documents listed in paragraph (k)(2) of this section; and

(C) A signed verification consent form.

(3) *Declaration.* For each family member who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the IHA a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S.

citizen or a noncitizen with eligible immigration status.

(i) For each adult, the declaration must be signed by the adult.

(ii) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(4) *Verification consent form.*—(i) *Who signs.* Each noncitizen who declares eligible immigration status, must sign a verification consent form as follows:

(A) For each adult, the form must be signed by the adult;

(B) For each child, the form must be signed by an adult member of the family residing in the assisted dwelling unit who is responsible for the child.

(ii) *Notice of release of evidence by IHA.* The verification consent form shall provide that evidence of eligible immigration status may be released by the IHA, without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(A) HUD as required by HUD; and

(B) The INS for purposes of verification of the immigration status of the individual.

(iii) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(f) *Individuals who do not contend to have eligible immigration status.* If one or more members of a family elect not to contend that they have eligible immigration status and the other members of the family establish their citizenship or eligible immigration status, the family may be considered for assistance under paragraphs (r) or (s) of this section despite the fact that no declaration or documentation of eligible status is submitted by one or more members of the family. The family, however, must identify to the IHA, the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(g) *Notification of requirements of Section 214—(1) When notice is to be issued.* Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible immigration status as provided by

paragraph (f) of this section, shall be given by the IHA as follows:

(i) *Applicant's notice.* The notification described in paragraph (g)(1) of this section shall be given to each applicant at the time of application for financial assistance. Families whose applications are pending on June 19, 1995 shall be notified of the requirements to submit evidence of eligible status as soon as possible after June 19, 1995.

(ii) *Notice to families already receiving assistance.* For a family in occupancy on June 19, 1995, the notification described in paragraph (g)(1) of this section shall be given to each at the time of, and together with, the IHA's notice of the regular reexamination after that date, but no later than one year following June 19, 1995.

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of the evidence of citizenship or eligible immigration status, as required by this section;

(ii) Describe the type of evidence that must be submitted and state the time period in which that evidence must be submitted (see paragraph (h) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see paragraph (n) of this section concerning INS appeal, and paragraph (o) of this section concerning IHA informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Families already receiving assistance also shall be informed of how to obtain assistance under the preservation of families provisions of paragraph (r) of this section.

(h) *When evidence of eligible status is required to be submitted.* The IHA shall require evidence of eligible status to be submitted at the times specified in paragraph (h) of this section subject to any extension granted in accordance with paragraph (i) of this section.

(1) *Applicants.* For applicants, the IHA must ensure that evidence of eligible status is submitted not later than the date the IHA anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see paragraph (l) of this section).

(2) *Families already receiving assistance.* For a family already receiving the benefit of assistance in a covered program on June 19, 1995, the

required evidence shall be submitted at the first regular reexamination after June 19, 1995, in accordance with program requirements.

(3) *New occupants of assisted units.* For any new family members, the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this part unless the family already has submitted the evidence to the IHA for a covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any covered program.

(i) *Extensions of time to submit evidence of eligible status.*—(1) *When extension must be granted.* The IHA shall extend the time, provided in paragraph (h) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under paragraph (e)(3) of this section certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) *Prohibition on indefinite extension period.* Any extension of time, if granted, shall be for a specific period of time. The additional time provided should be sufficient to allow the family the time to obtain the evidence needed. The IHA's determination of the length of the extension needed, shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The IHA's decision to grant or deny an extension as provided in paragraph (i)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted. If the extension is denied, the notice shall explain the reasons for denial of the extension.

(j) *Failure to submit evidence or establish eligible immigration status.* If the family fails to submit required evidence of eligible immigration status

within the time period specified in the notice, or any extension granted in accordance with paragraph (i) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the IHA shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance, respectively with the provisions of paragraph (m) of this section or paragraph (r) of this section.

(k) *Documents of eligible immigration status.*—(1) *General.* An IHA shall request and review original documents of eligible immigration status. The IHA shall retain photocopies of the documents for its own records and return the original documents to the family.

(2) *Acceptable evidence of eligible immigration status.* The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with paragraph (l) of this section:

(i) Form I-551, Alien Registration Receipt Card (for permanent resident aliens);

(ii) Form I-94, Arrival-Departure Record, with one of the following annotations:

(A) "Admitted as Refugee Pursuant to Section 207";

(B) "Section 208" or "Asylum";

(C) "Section 243(h)" or "Deportation stayed by Attorney General";

(D) "Paroled Pursuant to Sec. 212(d)(5) of the INA";

(iii) If Form I-94, Arrival-Departure Record, is not annotated, then accompanied by one of the following documents:

(A) A final court decision granting asylum (but only if no appeal is taken);

(B) A letter from an INS asylum officer granting asylum (if application is filed on or after October 1, 1990) or from an INS district director granting asylum (if application filed before October 1, 1990);

(C) A court decision granting withholding or deportation; or

(D) A letter from an INS asylum officer withholding of deportation (if application filed on or after October 1, 1990).

(iv) Form I-688, Temporary Resident Card, which must be annotated "Section 245A" or "Section 210";

(v) Form I-688B, Employment Authorization Card, which must be annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12";

(vi) A receipt issued by the INS indicating that an application for

issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(vii) If other documents are determined by the INS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the **Federal Register**.

(l) *Verification of eligible immigration status.*—(1) *When verification is to occur.* Verification of eligible immigration status shall be conducted by the IHA simultaneously with verification of other aspects of eligibility for assistance under a Section 214 covered program. (See paragraph (h) of this section.) The IHA shall verify eligible immigration status in accordance with the INS procedures described in this section.

(2) *Primary verification.*—(i) *Automated verification system.* Primary verification of the immigration status of the person is conducted by the IHA through the INS automated system (INS Systematic for Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(ii) *Failure of primary verification to confirm eligible immigration status.* If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(3) *Secondary verification.*—(i) *Manual search of INS records.* Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The IHA must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance under a covered Section 214 covered program.

(ii) *Secondary verification initiated by IHA.* Secondary verification is initiated by the IHA forwarding photocopies of the original INS documents listed in paragraph (k)(2) of this section (front and back), attached to the INS document verification request form G-845S (Document Verification Request), or such other form specified by the INS, to a designated INS office for review. (Form G-845S is available from the local INS Office.)

(iii) *Failure of secondary verification to confirm eligible immigration status.* If the secondary verification does not confirm eligible immigration status, the IHA shall issue to the family the notice

described in paragraph (m)(4) of this section, which includes notification of appeal to the INS of the INS finding on immigration status (see paragraph (m)(4)(iv) of this section).

(4) *Exemption from liability for INS verification.* The IHA shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

(m) *Delay, denial, or termination of assistance.*—(1) *Restrictions on delay, denial, or termination of assistance.* Assistance to an applicant shall not be delayed or denied, and assistance to a tenant shall not be delayed, denied, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the tenant's dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the tenant's dwelling unit;

(iv) The INS appeals process under paragraph (n) of this section has not been concluded;

(v) For a tenant, the IHA hearing process under paragraph (o) of this section has not been concluded;

(vi) Assistance is prorated in accordance with paragraph(s) of this section;

(vii) Assistance for a mixed family is continued in accordance with paragraph (r) of this section; or

(viii) Deferral of termination of assistance is granted in accordance with paragraph (r) of this section.

(2) *When delay of assistance to applicant is permissible.* Assistance to an applicant may be delayed after the conclusion of the INS appeal process, but not denied until the conclusion of the IHA informal hearing process, if an informal hearing is requested by the family.

(3) *Events causing denial or termination of assistance.* Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in paragraph (h) of this section, or by the expiration of any extension granted in accordance with paragraph (i) of this section; or

(ii) The evidence of citizenship and eligible immigration status is timely submitted, but INS primary and second verification does not verify eligible immigration status of a family member; and

(A) The family does not pursue INS appeal (as provided in paragraph (n) of this section) or IHA informal hearing rights (as provided in paragraph (o) of this section); or

(B) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

(4) *Notice of denial or termination of assistance.* The notice of denial or termination of assistance shall advise the family:

(i) The financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(ii) That the family may be eligible for proration of assistance as provided in paragraph(s) of this section;

(iii) In the case of a tenant, the criteria and procedures for obtaining relief under the preservation of families provisions in paragraph (r) of this section;

(iv) That the family has a right to request an appeal to the INS of the results of the secondary verification of immigration status, and to submit additional documentation or a written explanation in support of the appeal, in accordance with the procedures of paragraph (n) of this section;

(v) That the family has a right to request an informal hearing with the IHA either upon completion of the INS appeal or in lieu of the INS appeal, as provided in paragraph (n) of this section;

(vi) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the IHA informal hearing process.

(n) *Appeal to the INS*—(1) *Submission of request for appeal.* Upon receipt of notification by the IHA that INS secondary verification failed to confirm eligible immigration status, the IHA shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the IHA's notification, to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the IHA with a copy of the written request for appeal and proof of mailing. For good cause shown, the IHA

shall grant the family an extension of time within which to request an appeal.

(2) *Documentation to be submitted as part of appeal to INS.* The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS document verification request form G-845S (used to process the secondary verification request) or such other form specified by the INS, and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results. (Form G-845S is available from the local INS Office.)

(3) *Decision by INS*—(i) *When decision will be issued.* The INS will issue to the family, with a copy to the IHA, a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the family and the IHA of the reasons for the delay.

(ii) *Notification of INS decision and of informal hearing procedures.* When the IHA receives a copy of the INS decision, the IHA shall notify the family of its right to request an informal hearing on the IHA's ineligibility determination in accordance with the procedures of paragraph (o) of this section.

(4) *No delay, denial or termination of assistance until completion of INS appeal process; direct appeal to INS.* Pending the completion of the INS appeal under this section, assistance may not be delayed, denied or terminated on the basis of immigration status.

(o) *Informal hearing*—(1) *When request for hearing is to be made.* After notification of the INS decision, or in lieu of request of appeal to the INS, the family may request that the IHA provide a hearing. This request must be made either within 14 days of the date the IHA mails or delivers the notice under paragraph (m)(4) of this section, or within 14 days of the mailing of the INS appeal decision issued in accordance with paragraph (n)(4) of this section (established by the date of postmark).

(2) *Extension of time to request hearing.* The IHA shall extend the period of time for requesting a hearing (for a specified period) upon good cause shown.

(3) *Informal hearing procedures.* (i) For tenants, the procedures for the hearing before the IHA are set forth in § 905.340.

(ii) For applicants, the procedures for the informal hearing before the IHA are as follows:

(A) *Hearing before an impartial individual.* The applicant shall be provided a hearing before any person(s) designated by the IHA (including an officer or employee of the IHA), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(B) *Examination of evidence.* The applicant shall be provided the opportunity to examine and copy, at the applicant's expense and at a reasonable time in advance of the hearing, any documents in the possession of the IHA pertaining to the applicant's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(C) *Presentation of evidence and arguments in support of eligible status.* The applicant shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(D) *Controverting evidence of the project owner.* The applicant shall be provided the opportunity to controvert evidence relied upon by the IHA and to confront and cross-examine all witnesses on whose testimony or information the IHA relies;

(E) *Representation.* The applicant shall be entitled to be represented by an attorney, or other designee, at the applicant's expense, and to have such person make statements on the applicant's behalf;

(F) *Interpretive services.* The applicant shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the applicant or the IHA, as may be agreed upon by both parties;

(G) *Hearing to be recorded.* The applicant shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to, be provided by the IHA); and

(H) *Hearing decision.* The IHA shall provide the applicant with a written final decision, based solely on the facts presented at the hearing within 14 days of the date of the informal hearing. The decision shall state basis for the decision.

(p) *Judicial relief.* A decision against a family member under the INS appeal process or the IHA informal hearing process does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(q) *Retention of documents.* The IHA shall retain for a minimum of 5 years the following documents that may have been submitted to the IHA by the family or provided to the IHA as part of the INS appeal or the IHA informal hearing process:

(1) The application for financial assistance;

(2) The form completed by the family for income re-examination;

(3) Photocopies of any original documents (front and back), including original INS documents;

(4) The signed verification consent form;

(5) The INS verification results;

(6) The request for an INS appeal;

(7) The final INS determination;

(8) The request for an IHA informal hearing; and

(9) The final hearing decision.

(r) *Preservation of mixed families and other families—*(1) *Assistance available for mixed families—*(i) *Assistance available for tenant mixed families.* For a mixed family assisted under a Section 214 covered program on June 19, 1995, and following the appeals and informal hearing procedures provided in paragraphs (n) and (o) of this section if utilized by the family, one of the following three types of assistance may be available to the family:

(A) Continued assistance (see paragraph (r)(2) of this section);

(B) Temporary deferral of termination of assistance (see paragraph (r)(3) of this section); or

(C) Prorated assistance (see paragraph (s) of this section; a mixed family must be provided prorated assistance if the family so requests).

(ii) *Assistance available for applicant mixed families.* Prorated assistance is also available for mixed families applying for assistance, as provided in paragraph (s) of this section.

(iii) *Assistance available to other families in occupancy.* For families receiving assistance under a Section 214 covered program on June 19, 1995 and who have no members with eligible immigration status, the IHA may grant the family temporary deferral of termination of assistance.

(2) *Continued assistance.* A mixed family may receive continued housing assistance if all of the following conditions are met:

(i) The family was receiving assistance under a Section 214 covered program on June 19, 1995;

(ii) The family's head of household or spouse has eligible immigration status as described in paragraph (b)(2) of this section; and

(iii) The family does not include any person (who does not have eligible

immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(3) *Temporary deferral of termination of assistance—*(i) *Eligibility for this type of assistance.* If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(ii) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of three years.

(iii) *Notification requirements for beginning of each deferral period.* At the beginning of each deferral period, the IHA must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(iv) *Determination of availability of affordable housing at end of each deferral period.* Before the end of each deferral period, the IHA must:

(A) Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the consolidated plan (if applicable, as described in 24 CFR part 91), the IHA's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing; and

(B) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period,

that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceed three years), and a determination was made that other affordable housing is not available; or

(C) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed three years, or a determination has been made that other affordable housing is available.

(v) *Option to select proration of assistance at end of deferral period.* A family who is eligible for, and receives temporary deferral of termination of assistance, may request, and the IHA shall provide, proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.

(vi) *Notification of decision on family preservation assistance.* An IHA shall notify the family of its decision concerning the family's qualification for assistance under this section. If the family is ineligible for assistance under this section, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the tenant family of any appeal rights.

(s) *Proration of assistance—(1) Applicability.* This section applies to a mixed family other than a family receiving continued assistance under paragraph (r)(2) of this section, or other than a family who is eligible for and requests temporary deferral of termination of assistance under paragraph (r)(3) of this section. The IHA must provide an eligible mixed family prorated assistance if the family request prorated assistance.

(2) *Method of prorating assistance.* The IHA shall prorate the family's assistance by:

(i) *Step 1.* Determining total tenant payment in accordance with § 905.325 (annual income includes income of all family members, including any family member who has not established eligible immigration status).

(ii) *Step 2.* Subtracting the total tenant payment from a HUD-supplied "Indian housing maximum rent" applicable to the unit or the housing authority. ("Indian housing maximum rent" shall be determined by HUD using the 95th percentile rent for the housing authority.) The result is the maximum subsidy for which the family could

qualify if all members were eligible ("family maximum subsidy").

(iii) *Step 3.* Dividing the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status ("eligible family member"). The subsidy per eligible family member is the "member maximum subsidy".

(iv) *Step 4.* Multiplying the member maximum subsidy by the number of family members who have citizenship or eligible immigration status ("eligible family members").

(v) *Step 5.* The product of steps 1–4, as set forth in paragraph (s)(2) of this section is the amount of subsidy for which the family is eligible ("eligible subsidy"). The family's rent is the "public housing maximum rent" minus the amount of the eligible subsidy.

(t) *Prohibition of assistance to noncitizen students—(1) General.* The provisions of this section permitting continued assistance, prorated assistance or temporary deferral of termination of assistance for certain families, do not apply to any person who is determined to be a noncitizen student, as defined in paragraph (t)(2) of this section, or the family of the noncitizen student, as described in paragraph (t)(3) of this section.

(2) *Noncitizen student.* For purposes of this part, a noncitizen student is defined as a noncitizen who:

(i) Has a residence in a foreign country that the person has no intention of abandoning;

(ii) Is a bona fide student qualified to pursue a full course of study; and

(iii) Is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such person and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn).

(3) *Family of noncitizen student.* The prohibition on providing assistance to a noncitizen student as described in paragraph (t)(1) of this section also extends to the noncitizen spouse of the noncitizen student and minor children of any noncitizen student if the spouse or children are accompanying the student or following to join such

student. The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

(u) *Protection from liability for IHAs, State, Tribal, and local government agencies and officials—(1) Protection from liability for IHAs.* HUD will not take any compliance, disallowance, penalty, or other regulatory action against an IHA with respect to any error in its determination of eligibility for assistance based on citizenship or immigration status:

(i) If the IHA established eligibility based upon verification of eligible immigration status through the verification system described in paragraph (l) of this section;

(ii) Because the IHA was required to provide an opportunity for the applicant or family to submit evidence in accordance with paragraphs (h) and (i) of this section;

(iii) Because the IHA was required to wait for completion of INS verification of immigration status in accordance with paragraph (l) of this section;

(iv) Because the IHA was required to wait for completion of the INS appeal process provided in accordance with paragraph (n) of this section; or

(v) Because the IHA was required to provide an informal hearing in accordance with paragraph (o) of this section.

(2) *Protection from liability for State, Tribal and local government agencies and officials.* State, Tribal, and local government agencies and officials shall not be liable for the design or implementation of the verification system described in paragraph (l) of this section and the IHA informal hearing provided under paragraph (o) of this section, so long as the implementation by the State, Tribal, or local government agency or official is in accordance with prescribed HUD rules and requirements.

88. Section 905.315 is amended by redesignating paragraphs (a)(i) and (a)(ii) as (a)(1) and (a)(2), respectively; by redesignating existing paragraphs (a)(2) and (a)(3) as paragraphs (b) and (c) respectively; and by adding a new paragraph (d), to read as follows:

§ 905.315 Initial determination, verification, and reexamination of family income and composition.

* * * * *

(d) *Implementation of verification of citizenship or eligible immigration status.* The IHA shall follow the procedures required by § 905.310 for determining citizenship or eligible immigration status before initial

occupancy, and, for tenants admitted before June 19, 1995, at the first reexamination of family income and composition after that date. Thereafter, at the annual reexaminations of family income and composition, the IHA shall follow the requirements of § 905.310 concerning verification of the immigration status of any new family member. The family shall comply with the IHA's policy regarding required interim reporting of changes in the family's income and composition. If the IHA is informed of a change in the family income or other circumstances between regularly scheduled reexaminations, the IHA, upon consultation with the family and verification of the information, shall promptly make any adjustments appropriate in the rent or Homebuyer payment amount or take appropriate action concerning the addition of a family member who is a noncitizen with ineligible immigration status.

PART 912—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

89. The authority citation for part 912 is revised to read as follows:

Authority: 42 U.S.C. 1436a, 1437a, and 3535(d).

90. Section 912.1 is amended by changing the period at the end of paragraph (a)(2) to a semicolon and adding the word "and" following the semicolon; and by adding a new paragraph (a)(3), to read as follows:

§ 912.1 Purpose and applicability.

(a) * * *

(3) Implements the statutory prohibition against making assistance under the United States Housing Act of 1937 ("Act") (42 U.S.C. 1437 *et seq.*) available for the benefit of noncitizens with ineligible immigration status.

* * * * *

91. Section 912.2 is amended by adding definitions in alphabetical order for the terms "Child," "Citizen," "Evidence of citizenship or eligible immigration status," "Head of household," "HUD," "Mixed family," "National," "Noncitizen," "Section 214," and "Section 214 covered program," to read as follows:

§ 912.2 Definitions.

Child. A member of the family, other than the family head or a spouse, who is under 18 years of age.

Citizen. A citizen or national of the United States.

* * * * *

Evidence of citizenship or eligible immigration status. The documents

which must be submitted to evidence citizenship or eligible immigration status (see § 912.6(b)).

* * * * *

Head of household. The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

HUD. The Department of Housing and Urban Development.

* * * * *

Mixed family. A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Noncitizen. A person who is neither a citizen nor national of the United States.

* * * * *

Section 214. Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the categories of eligible immigration status specified in Section 214.

Section 214 covered programs. Programs to which the restrictions imposed by Section 214 apply are programs that make available financial assistance pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437–1440), Section 235 or Section 236 of the National Housing Act (12 U.S.C. 1715z and 1715z–1) and Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

* * * * *

92. Part 912 is amended by redesignating §§ 912.1 through 912.4 as subpart A, and by adding the subpart heading to read, "Subpart A—General", and by adding a new subpart B consisting of §§ 912.5 through 912.14, to read as follows:

Subpart B—Restrictions on Assistance to Noncitizens

Sec.

912.5 General.

912.5a Requirements concerning documents.

912.6 Submission of evidence of citizenship or eligible immigration status.

912.7 Documents of eligible immigration status.

912.8 Verification of eligible immigration status.

912.9 Delay, denial, or termination of assistance.

912.10 Preservation of mixed families and other families.

912.11 Proration of assistance.

912.12 Prohibition of assistance to noncitizen students.

912.13 Compliance with nondiscrimination requirements.

912.14 Protection from liability for PHAs, State, local, and tribal government agencies and officials.

Subpart B—Restrictions on Assistance to Noncitizens

§ 912.5 General.

(a) *Restrictions on assistance.*

Assistance provided under a Section 214 covered program is restricted to:

(1) *Citizens*; or

(2) *Noncitizens* who have eligible immigration status in one of the following categories:

(i) A noncitizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively) (immigrants). (This category includes a noncitizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161), (special agricultural worker), who has been granted lawful temporary resident status);

(ii) A noncitizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(iii) A noncitizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (refugee status); pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) (asylum status); or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(iv) A noncitizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) (parole status);

(v) A noncitizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the

INA (8 U.S.C. 1253(h)) (threat to life or freedom); or

(vi) A noncitizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) (amnesty granted under INA 245A).

(b) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section;

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of the three types of assistance provided in § 912.10. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in § 912.10.

§ 912.5a Requirements concerning documents.

For any notice or document (decision, declaration, consent form, etc.) that §§ 912.5 through 912.14 require a PHA to provide to an individual, or require that the PHA obtain the signature of the individual, the PHA, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

§ 912.6 Submission of evidence of citizenship or eligible immigration status.

(a) *General.* Eligibility for assistance or continued assistance under a Section 214 covered program is contingent upon a family's submission to the PHA of the documents described in paragraph (b) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the family members may exercise the election not to contend to have eligible immigration status as provided in paragraph (e) of this section, and the provisions of § 912.10 shall apply.

(b) *Evidence of citizenship or eligible immigration status.* Each family member, regardless of age, must submit the following evidence to the PHA:

(1) For citizens, the evidence consists of a signed declaration of U.S. citizenship;

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on June 19, 1995, the evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) Proof of age document.

(3) For all other noncitizens, the evidence consists of:

(i) A signed declaration of eligible immigration status;

(ii) The INS documents listed in § 912.7; and

(iii) A signed verification consent form.

(c) *Declaration.* For each family member who contend that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the PHA a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status:

(1) For each adult, the declaration must be signed by the adult.

(2) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(d) *Verification consent form—(1) Who signs.* Each noncitizen who declares eligible immigration status, must sign a verification consent form as follows:

(i) For each adult, the form must be signed by the adult.

(ii) For each child, the form must be signed by an adult member of the family residing in the assisted dwelling unit who is responsible for the child.

(2) *Notice of release of evidence by PHA.* The verification consent form shall provide that evidence of eligible immigration status may be released by the PHA, without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(i) HUD is required by HUD; and

(ii) The INS for purposes of verification of the immigration status of the individual.

(3) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(e) *Individuals who do not contend to have eligible immigration status.* If one or more members of a family elect not to contend that they have eligible immigration status and the other members of the family establish their citizenship or eligible immigration status, the family may be considered for assistance under §§ 912.10 or 912.11

despite the fact that no declaration or documentation of eligible status is submitted by one or more members of the family. The family, however, must identify to PHA the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(f) *Notification of requirements of Section 214—(1) Timing of notice.* Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible immigration status as provided by paragraph (e) of this section, shall be given by the PHA as follows:

(i) *Applicant's notice.* The notification described in paragraph (f)(1) of this section shall be given to each applicant at the time of application for financial assistance. Families whose applications are pending on June 19, 1995 shall be notified of the requirements to submit evidence of eligible status as soon as possible after June 19, 1995.

(ii) *Notice to families already receiving assistance.* For a family in occupancy on June 19, 1995, the notification described in paragraph (f)(1) of this section shall be given to each at the time of, and together with, the PHA's notice of the first regular reexamination after that date, but not later than one year following June 19, 1995.

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of the evidence of citizenship or eligible immigration status, as required by this section;

(ii) Describe the type of evidence that must be submitted and state the time period in which that evidence must be submitted (see paragraph (g) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see § 912.9 concerning INS appeal, and PHA informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Families already receiving assistance also shall be informed of how to obtain assistance under the preservation of families provisions of § 912.10.

(g) *When evidence of eligible status is required to be submitted.* The PHA shall require evidence of eligible status to be submitted at the times specified in paragraph (g) of this section, subject to

any extension granted in accordance with paragraph (h) of this section.

(1) *Applicants.* For applicants, the PHA must ensure that evidence of eligible status is submitted not later than the date the PHA anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see § 912.8(a)).

(2) *Families already receiving assistance.* For a family already receiving the benefit of assistance in a covered program on June 19, 1995, the required evidence shall be submitted at the first regular reexamination after June 19, 1995, in accordance with program requirements.

(3) *New occupants of assisted units.* For any new family members, the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this part unless the family already has submitted the evidence to the PHA for a covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any covered program.

(h) *Extensions of time to submit evidence of eligible status.*—(1) *When extension must be granted.* The PHA shall extend the time provided in paragraph (g) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under § 912.6(b) certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) *Prohibition on indefinite extension period.* Any extension of time, if granted, shall be for a specific period of time. The additional time provided should be sufficient to allow the family the time to obtain the evidence needed. The PHA's determination of the length of the extension needed, shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The PHA's decision to grant

or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted. If the extension is denied, the notice shall explain the reasons for denial of the extension.

(i) *Failure to submit evidence or establish eligible immigration status.* If the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (h) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the PHA shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance with the provisions of §§ 912.9 and 912.10 respectively.

§ 912.7 Documents of eligible immigration status.

(a) *General.* A PHA shall request and review original documents of eligible immigration status. The PHA shall retain photocopies of the documents for its own records and return the original documents to the family.

(b) *Acceptable evidence of eligible immigration status.* The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with § 912.8:

(1) Form I-551, Alien Registration Receipt Card (for permanent resident aliens);

(2) Form I-94, Arrival-Departure Record, with one of the following annotations:

(i) "Admitted as Refugee Pursuant to section 207";

(ii) "Section 208" or "Asylum";

(iii) "Section 243(h)" or "Deportation stayed by Attorney General";

(iv) "Paroled Pursuant to Sec. 212(d)(5) of the INA";

(3) If Form I-94, Arrival-Departure Record, is not annotated, then accompanied by one of the following documents:

(i) A final court decision granting asylum (but only if no appeal is taken);

(ii) A letter from an INS asylum officer granting asylum (if application is filed on or after October 1, 1990) or from an INS district director granting asylum (if application is filed before October 1, 1990);

(iii) A court decision granting withholding of deportation; or

(iv) A letter from an INS asylum officer granting withholding of

deportation (if application is filed on or after October 1, 1990).

(4) Form I-688, Temporary Resident Card, which must be annotated "Section 245A" or "Section 210";

(5) Form I-688B, Employment Authorization Card, which must be annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12";

(6) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(c) *Other acceptable evidence.* If other documents are determined by the INS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the **Federal Register**.

§ 912.8 Verification of eligible immigration status.

(a) *When verification is to occur.* Verification of eligible immigration status shall be conducted by the PHA simultaneously with verification of other aspects of eligibility for assistance under a Section 214 covered program. (See § 912.6(g).) The PHA shall verify eligible immigration status in accordance with the INS procedures described in this section.

(b) *Primary verification.*—(1) *Automated verification system.* Primary verification of the immigration status of the person is conducted by the PHA through the INS automated system (INS Systematic for Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(2) *Failure of primary verification to confirm eligible immigration status.* If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(c) *Secondary verification.*—(1) *Manual search of INS records.*

Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The PHA must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance under a covered Section 214 covered program.

(2) *Secondary verification initiated by PHA.* Secondary verification is initiated by the PHA forwarding photocopies of the original INS documents listed in

§ 912.7 (front and back), attached to the INS document verification request form G-845S (Document Verification Request), or such other form specified by the INS, to a designated INS office for review. (Form G-845S is available from the local INS Office.)

(3) *Failure of secondary verification to confirm eligible immigration status.* If the secondary verification does not confirm eligible immigration status, the IHA shall issue to the family the notice described in § 912.9(d), which includes notification of appeal to the INS of the INS finding on immigration status (see § 912.9(d)(4)).

(d) *Exemption from liability for INS verification.* The PHA shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

§ 912.9 Delay, denial, or termination of assistance.

(a) *General.* Assistance to a family may not be delayed, denied, or terminated because of the immigration status of a family member except as provided in this section.

(b) *Restrictions on delay, denial, or termination of assistance*—(1) *General.* Assistance to an applicant shall not be delayed or denied, and assistance to a tenant shall not be delayed, denied, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member of whom required evidence has not been submitted has moved from the tenant's dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the tenant's dwelling unit;

(iv) The INS appeals process under § 912.9(e) has not been concluded;

(v) For a tenant, the PHA hearing process under § 912.9(f) has not been concluded;

(vi) Assistance is prorated in accordance with § 912.11;

(vii) Assistance for a mixed family is continued in accordance with § 912.10; or

(viii) Deferral of termination of assistance is granted in accordance with § 912.10.

(2) *When delay of assistance to an applicant is permissible.* Assistance to an applicant may be delayed after the conclusion of the INS appeal process, but not denied until the conclusion of the PHA informal hearing process, if an

informal hearing is requested by the family.

(c) *Events causing denial or termination of assistance.* Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(1) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in § 912.6(g) or by the expiration of any extension granted in accordance with § 912.6(h); or

(2) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and second verification does not verify eligible immigration status of a family member; and

(i) The family does not pursue INS appeal or PHA informal hearing rights as provided in this section; or

(ii) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

(d) *Notice of denial or termination of assistance.* The notice of denial or termination of assistance shall advise the family:

(1) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(2) That they may be eligible for proration of assistance as provided under § 912.11;

(3) In the case of a tenant, the criteria and procedures for obtaining relief under the preservation of families provision in § 912.10;

(4) The family has a right to request an appeal to the INS of the results of the secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal in accordance with the procedures of paragraph (e) of this section;

(5) The family has a right to request an informal hearing with the PHA either upon completion of the INS appeal or in lieu of the INS appeal as provided in paragraph (f) of this section;

(6) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the PHA informal hearing process.

(e) *Appeal to the INS*—(1) *Submission of request for appeal.* Upon receipt of notification by the PHA that INS secondary verification failed to confirm eligible immigration status, the PHA shall notify the family of the results of

the INS verification, and the family shall have 30 days from the date of the project owner's notification to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the PHA with a copy of the written request for appeal and proof of mailing. For good cause shown, the PHA shall grant the family an extension of time within which to request an appeal.

(2) *Documentation to be submitted as part of appeal to INS.* The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS document verification request form G-845S (used to process the secondary verification request) or such other form specified by the INS, and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results.

(3) *Decision by INS*—(i) *When decision will be issued.* The INS will issue to the family, with a copy to the PHA, a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the family and the PHA of the reasons for the delay.

(ii) *Notification of INS decision and of informal hearing procedures.* When the PHA receives a copy of the INS decision, the PHA shall notify the family of its right to request an informal hearing on the PHA's ineligibility determination in accordance with the procedures of paragraph (f) of this section.

(4) *No delay, denial or termination of assistance until completion of INS appeal process; direct appeal to INS.* Pending the completion of the INS appeal under this section, assistance may not be delayed, denied or terminated on the basis of immigration status.

(f) *Informal hearing*—(1) *When request for hearing is to be made.* After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, the family may request that the PHA provide a hearing. This request must be made either within 14 days of the date the PHA mails or delivers the notice under paragraph (d) of this section, or within 14 days of the mailing of the INS appeal decision issued in accordance with paragraph (e) of this section (established by the date of postmark).

(2) *Extension of time to request hearing.* The PHA shall extend the period of time for requesting a hearing (for a specified period) upon good cause shown.

(3) *Informal hearing procedures.* (i) For tenants, the procedures for the hearing before the PHA are set forth in 24 CFR part 966.

(ii) For applicants, the procedures for the informal hearing before the PHA are as follows:

(A) *Hearing before an impartial individual.* The applicant shall be provided a hearing before any person(s) designated by the PHA (including an officer or employee of the PHA), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(B) *Examination of evidence.* The PHA shall be provided the opportunity to examine and copy at the applicant's expense, at a reasonable time in advance of the hearing, any documents in the possession of the PHA pertaining to the applicant's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(C) *Presentation of evidence and arguments in support of eligible status.* The applicant shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(D) *Controverting evidence of the project owner.* The applicant shall be provided the opportunity to controvert evidence relied upon by the PHA and to confront and cross-examine all witnesses on whose testimony or information the PHA relies;

(E) *Representation.* The applicant shall be entitled to be represented by an attorney, or other designee, at the applicant's expense, and to have such person make statements on the applicant's behalf;

(F) *Interpretive services.* The applicant shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the applicant or PHA, as may be agreed upon by both parties;

(G) *Hearing to be recorded.* The applicant shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to be provided by the PHA); and

(H) *Hearing decision.* The PHA shall provide the applicant with a written final decision, based solely on the facts

presented at the hearing within 14 days of the date of the informal hearing.

(g) *Judicial relief.* A decision against a family member, issued in accordance with paragraphs (e) or (f) of this section, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(h) *Retention of documents.* The PHA shall retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the INS appeal or the PHA informal hearing process:

(1) The application for financial assistance;

(2) The form completed by the family for income re-examination;

(3) Photocopies of any original documents (front and back), including original INS documents;

(4) The signed verification consent form;

(5) The INS verification results;

(6) The request for an INS appeal;

(7) The final INS determination;

(8) The request for a PHA informal hearing; and

(9) The final PHA hearing decision.

§ 912.10 Preservation of mixed families and other families.

(a) *Assistance available for mixed families.* (1) *Assistance available for tenant mixed families.* For a mixed family assisted under a Section 214 covered program on June 19, 1995, and following completion of the appeals and informal hearing procedures provided in § 912.9 if utilized by the family, one of the following three types of assistance may be available to the family:

(i) Continued assistance (see paragraph (b) of this section);

(ii) Temporary deferral of termination of assistance (see paragraph (c) of this section); or

(iii) Prorated assistance (see § 912.11; a mixed family must be provided prorated assistance if the family so requests); or

(2) *Assistance available for applicant mixed families.* Prorated assistance is also available for mixed families applying for assistance as provided in § 912.11.

(3) *Assistance available to other families in occupancy.* For families receiving assistance under a Section 214 covered program on the June 19, 1995 and who have no members with eligible immigration status, the PHA may grant the family temporary deferral of termination of assistance.

(b) *Continued assistance.* A mixed family may receive continued housing assistance if all of the following conditions are met:

(1) The family was receiving assistance under a Section 214 covered program on June 19, 1995;

(2) The family's head of household or spouse has eligible immigration status as described in § 912.5; and

(3) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(c) *Temporary deferral of termination of assistance.*—(1) *Eligibility for this type of assistance.* If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(2) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of three years.

(3) *Notification requirements for beginning of each deferral period.* At the beginning of each deferral period, the PHA must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(4) *Determination of availability of affordable housing at end of each deferral period.* Before the end of each deferral period, the PHA must:

(i) Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply for affordable housing for the area in which the project is located, the consolidated plan (if applicable, as

described in 24 CFR part 91), the PHA's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing; and

(ii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceed three years), and a determination was made that other affordable housing is not available; or

(iii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed three years, or a determination has been made that other affordable housing is available.

(d) *Option to select proration of assistance at end of deferral period.* A family who is eligible for, and receives temporary deferral of termination of assistance, may request, and the PHA shall provide, proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.

(e) *Notification of decision on family preservation assistance.* A PHA shall notify the family of its decision concerning the family's qualification for assistance under this section. If the family is ineligible for assistance under this section, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the family of any applicable appeal rights.

§ 912.11 Proration of assistance.

(a) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance under § 912.10(b), or other than a family who is eligible for and requests and receives temporary deferral of termination of assistance under § 912.10(c). An eligible mixed family who requests prorated assistance, must be provided prorated assistance.

(b) *Method of prorating assistance.* The PHA shall prorate the family's assistance by:

(1) *Step 1.* Determining total tenant payment in accordance with 24 CFR 913.107(a) (annual income includes income of all family members, including any family member who has not established eligible immigration status).

(2) *Step 2.* Subtracting the total tenant payment from a HUD-supplied "public

housing maximum rent" applicable to the unit or the housing authority. (Public housing maximum rent shall be determined by HUD using the 95th percentile rent for the housing authority.) The result is the maximum subsidy for which the family could qualify if all members were eligible ("family maximum subsidy").

(3) *Step 3.* Dividing the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status ("eligible family member"). The subsidy per eligible family member is the "member maximum subsidy."

(4) *Step 4.* Multiplying the member maximum subsidy by the number of "eligible" family members.

(5) *Step 5.* The product of steps 1–4, as set forth in paragraph (b)(2) of this section is the amount of subsidy for which the family is eligible ("eligible subsidy"). The family's rent is the "public housing maximum rent" minus the amount of the eligible subsidy.

§ 912.12 Prohibition of assistance to noncitizen students.

(a) *General.* The provisions of §§ 912.10 and 912.11, permitting continued assistance, prorated assistance or temporary deferral of termination of assistance for certain families, do not apply to any person who is determined to be a noncitizen student, as defined in paragraph (b) of this section, or the family of the noncitizen student, as described in paragraph (c) of this section.

(b) *Noncitizen student.* For purposes of this part, a noncitizen student is defined as a noncitizen who:

(1) Has a residence in a foreign country that the person has no intention of abandoning;

(2) Is a bona fide student qualified to pursue a full course of study; and

(3) Is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such person and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn).

(c) *Family of noncitizen student.* The prohibition on providing assistance to a

noncitizen student as described in paragraph (a) of this section also extends to the noncitizen spouse of the noncitizen student and minor children of any noncitizen student if the spouse or children are accompanying the student or following to join such student. The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

§ 912.13 Compliance with nondiscrimination requirements.

The PHA shall administer the restrictions on use of assisted housing by noncitizens with ineligible immigration status imposed by this part in conformity with the nondiscrimination requirements of, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–5) and the implementing regulations of 24 CFR part 1, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations of 24 CFR part 8, the Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations of 24 CFR part 100, and other civil rights statutes cited in the applicable program regulations. These statutes prohibit, among other things, discriminatory practices on the basis of race, color, national origin, sex, religion, age, disability and familial status in the provision of housing.

§ 912.14 Protection from liability for PHAs, State, local, and tribal government agencies and officials.

(a) *Protection from liability for PHAs.* HUD will not take any compliance, disallowance, penalty, or other regulatory action against a PHA with respect to any error in its determination of eligibility for financial assistance based on citizenship or immigration status:

(1) If the PHA established eligibility based upon verification of eligible immigration status through the verification system described in § 912.8;

(2) Because the PHA was required to provide an opportunity for the applicant or family to submit evidence in accordance with § 912.6;

(3) Because the PHA was required to wait for completion of INS verification of immigration status in accordance with § 912.8;

(4) Because the PHA was required to wait for completion of the INS appeal process provided in accordance with § 912.9(e); or

(5) Because the PHA was required to provide an informal hearing in

accordance with § 912.9(f) or 24 CFR part 966.

(b) *Protection from liability for State, local and tribal government agencies and officials.* State, local and tribal government agencies and officials shall not be liable for the design or implementation of the verification system described in § 912.8, and the informal hearings provided under § 912.9(f) and 24 CFR part 966, as long as the implementation by the State, local or tribal government agency or official is in accordance with prescribed HUD rules and requirements.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

93. The authority citation for part 960 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, and 3535(d).

94. In § 960.204, paragraphs (a) and (d)(4) are revised to read as follows:

§ 960.204 PHA tenant selection policies.

(a) In addition to policies and regulations including preferences and priorities established by the PHA for eligibility and admission to its public housing projects pursuant to the Act, the ACC, and parts 912 and 913 of this chapter, each PHA shall adopt and implement policies and procedures embodying standards and criteria for tenant selection which take into consideration the needs of individual families for public housing and the statutory purpose in developing and

operating socially and financially sound public housing projects that provide a decent home and a suitable living environment and foster economic and social diversity in the tenant body as a whole.

* * * * *

(d) * * *

(4) Provide for verification and documentation of information relevant to acceptance or rejection of an applicant, including documentation and verification of citizenship and eligible immigration status under 24 CFR part 912.

* * * * *

95. In § 960.206, paragraph (a) is revised to read as follows:

§ 960.206 Verification procedures.

(a) *General.* Adequate procedures must be developed to obtain and verify information with respect to each applicant. (See parts 912 and 913 of this chapter, and 24 CFR parts 750 and 760.) Information relative to the acceptance or rejection of an applicant or the grant or denial of a Federal preference under § 960.211 must be documented and placed in the applicant's file.

* * * * *

96. Section 960.209 is amended by adding two sentences at the end of paragraph (a), by adding one sentence at the end of paragraph (b), and by adding a new paragraph (c), to read as follows:

§ 960.209 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the PHA shall follow the requirements of 24 CFR part 912 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 912 concerning verification of the immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the PHA shall follow the requirements of 24 CFR part 912 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) *Termination.* For provisions requiring termination of participation for failure to establish citizenship or eligible immigration status, see 24 CFR 912.9, and also 24 CFR 912.10 for provisions concerning assistance to certain mixed families (families whose members include those with citizenship and eligible immigration status and those without eligible immigration status) in lieu of termination of assistance.

Dated: March 8, 1995.

Henry G. Cisneros,
Secretary.

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